OFFICE OF COUNCILMEMBER TODD GLORIA
COUNCIL DISTRICT THREE

MEMORANDUM

DATE: June 16, 2016

TO: Honorable Members of the Budget & Government Efficiency Committee

FROM: Councilmember Todd Gloria, Third Council District

SUBJECT: Earned Sick Leave and Minimum Wage Implementing Ordinance

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On June 7, 2016, San Diego voters affirmed the City Council's decision to provide five earned sick days and increased wages for hard working San Diegans. The next step to responsibly comply with this voter mandate is to expeditiously develop a strong implementing ordinance to enforce and administer this policy. As such, my office has been working closely with the City Attorney's Office to review best practices for enforcing earned sick and minimum wage laws in California, which have informed the recommendations set forth in this memorandum.

The implementing ordinance should build upon Section 39.0112 of the San Diego Earned Sick and Minimum Wage Ordinance - Implementation, Enforcement and Remedies, and include the following provisions:

- Establish and designate the Enforcement Office in the appropriate City department or office (options include the Office of the City Treasurer, the Purchasing and Contracting Department, or the creation of a new office);
- Require the Enforcement Office to report annually to the City Council to summarize activity, report on quantitative performance metrics, and recommend areas for improvement in the administration and enforcement of this policy;
- Provide clear noticing policies in multiple languages so that workers will be made well aware of their rights and will be more likely to report non-compliant employers;
- Establish a system to receive complaints in writing, online and by telephone in multiple languages, as well as a system to adjudicate complaints and order relief in cases of violations;
- Ensure complainant's confidentiality is maintained unless disclosure of such complainant's identity is necessary or required for resolution of the investigation;
- Establish a public hearing process for appeals and mandate non-discretionary fines to ensure a transparent and fair public process;
- Establish the authority for the Enforcement Office to collaborate and/or contract with community-based organizations and other government agencies on community outreach and enforcement strategies;
- Establish the authority for the Enforcement Office to refer cases to other agencies when state or federal laws appear to be violated;

- Establish the authority for the Enforcement Office to conduct proactive investigations and compliance reviews, particularly for businesses or industries with high rates of wage theft;
- Include higher fines for employers who repeatedly violate the sick leave and minimum wage requirements;
- Establish strong anti-retaliation measures, including:
    - A fine of $1,000 payable to the employee per retaliation violation and a civil penalty $1,000 per retaliation violation;
    - a fine of $3,000 payable to the employee and a civil penalty of $3,000 for an employer who retaliates via unlawful discharge from employment; and
    - Higher additional civil penalties for repeat offenders;
- Establish the authority for the Enforcement Office to issue subpoenas, examine and review employment records and workplaces, and interview current and former employees; and
- Establish the authority for the City to revoke or suspend business licenses, permits, registration certificates or other appropriate forms of leverage until a wage violation is remedied to increase compliance and encourage prompt repayment. Licenses or permits should be revoked permanently for employers with three or more separate violations.
- Consideration should also be given to:
    - Include wage theft as a reason to rescind contracts with the City, debar contractors, and prohibit contractors from renting City-owned space; and
    - Establish the authority to file a lien on an employer's property who refuses to pay a citation for unpaid wages.

I request the Budget & Government Efficiency Committee direct the City Attorney's Office to work with my office to draft an implementing ordinance inclusive of this policy direction, and bring it directly to Council for consideration on the date the Council approves the Earned Sick Leave and Minimum Wage Ordinance certification resolution in July.

Additionally, I request the Budget & Government Efficiency Committee direct the Mayor's Office to take the steps necessary to enter into a partnership agreement with the California Labor Commissioner's Office (Attachment 3) in order to establish a collaborative relationship to promote compliance with the law. This agreement will facilitate the provision of clear, accurate and easy-to-access outreach to employers, employees, and other stakeholders, and allow for sharing resources and enhancing enforcement by conducting joint investigations.

I appreciate the consideration of my Council colleagues, and look forward to working with the City Attorney to develop a responsible implementing ordinance.

TG/jl

Attachments:
1. San Diego Earned Sick Leave and Minimum Wage Ordinance (O-2016-56)
2. Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships, October 2015
3. Partnership Agreement between [Local Agency] and the California Labor Commissioner's Office
4. San Francisco Minimum Wage Ordinance and Sick Leave Ordinance
5. Los Angeles County Wage Enforcement Ordinance

cc: Honorable Mayor Kevin Faulconer
Honorable City Attorney Jan Goldsmith
Council President Sherri Lightner
Andrea Tevlin, Independent Budget Analyst
Liz Maland, City Clerk
Scott Chadwick, Chief Operating Officer
Stacey LoMedico, Assistant Chief Operating Officer
Marshall Anderson, Director of Council Affairs

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, FOR THEIR APPROVAL OR REJECTION AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE PRIMARY ELECTION TO BE HELD ON JUNE 7, 2016, ORDINANCE NO. O-20390, AMENDING THE SAN DIEGO MUNICIPAL CODE RELATING TO THE EARNED SICK LEAVE AND MINIMUM WAGE TO BE PROVIDED TO EMPLOYEES WORKING IN THE CITY OF SAN DIEGO.

WHEREAS, August 18, 2014, is the date of final passage by the Council of the City of San Diego (Council), of an ordinance amending the San Diego Municipal Code relating to earned sick leave and minimum wage for employees working in the City of San Diego, and the ordinance is on file in the Office of the City Clerk as Ordinance No. O-20390 (Ordinance); and

WHEREAS, on September 16, 2014, an authorized representative of proponent Betsy Ann Kinner submitted a referendary petition against the Ordinance to the City Clerk, and on that same day, the City Clerk accepted the referendary petition as filed, thereby suspending the Ordinance; and

WHEREAS, the City Clerk submitted the referendary petition to the San Diego County Registrar of Voters (Registrar of Voters) for signature verification; and

WHEREAS, the Registrar of Voters conducted a legally required verification and found the petition to contain the valid signatures of more than five percent of the City's registered voters at the last general election, sufficient to qualify the measure for direct submission to the voters as required by Charter section 23; and

WHEREAS, on October 16, 2014, the City Clerk certified that the referendary petition was sufficient and qualified for submittal to the voters; and

WHEREAS, on October 20, 2014, in compliance with San Diego Municipal Code (Municipal Code) section 27.1125, the City Clerk presented the petition and a certification of the sufficiency of its signatures to the City Council; and

WHEREAS, in compliance with Charter section 23 and Municipal Code section 27.1131, the City Council was required, within ten business days of the date of the Clerk's presentation, to reconsider the legislative act; and

WHEREAS, Municipal Code sections 27.1131 and 27.1132 require the City Council to reconsider the Ordinance and either: (1) grant the referendary petition to repeal the Ordinance, or (2) adopt a resolution of intention to submit the matter to the voters at a special election, and direct the City Attorney to prepare an ordinance calling a special election to place the matter on the ballot; and

WHEREAS, a special election for a referendum may be consolidated with the next Citywide Primary Election or Citywide General Election at which the matter can be placed on the ballot, or a separate special election may be called for the purpose of voting on the matter; and

WHEREAS, on October 20, 2014, the Council reconsidered the Ordinance in light of the referendary petition, and decided not to repeal the Ordinance, but instead declared its intention to submit the referendary petition against Ordinance No. O-20390 to the electorate at a special election to be held in June 2016; and

WHEREAS, by Ordinance No. O-_____, introduced and adopted on _____, 2016, the Council has called a Municipal Special Election, to be consolidated with the California State Primary Election to be held June 7, 2016, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, pursuant to Charter section 295(b), the Council's resolution of intention related to matters to submit to City voters at a Municipal Special Election is not subject to veto, and thus the date of its passage by the Council has been deemed the date of its final passage; and

WHEREAS, in compliance with the Municipal Code, state law and the Council's resolution directing placement of the ordinances on the ballot, the City Attorney has prepared this ordinance to submit to the electorate, for approval or rejection, Ordinance No. O-20390; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition is hereby submitted to the qualified voters at the Municipal Special Election to be held on June 7, 2016, and consolidated with the California State Primary Election to be held on the same date, with the proposition to read as follows:

PROPOSITION

ORDINANCE NUMBER O-20390 (NEW SERIES)

DATE OF FINAL PASSAGE August 18, 2014

AN ORDINANCE AMENDING CHAPTER 3 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 9, DIVISION 1, SECTIONS 39.0101 THROUGH 39.0115 RELATING TO THE EARNED SICK LEAVE AND MINIMUM WAGE TO BE PROVIDED TO EMPLOYEES WORKING IN THE CITY OF SAN DIEGO.

WHEREAS, to safeguard the public welfare, health, safety, and prosperity of the people in the City of San Diego, it is essential that working persons earn wages that ensure a decent and healthy life; and

WHEREAS, a number of San Diego families live below the poverty level, and many who are employed do not earn sufficient wages to be self-sufficient and do not accrue sick leave; and

WHEREAS, when businesses do not pay a livable wage or allow workers to earn and use sick leave, the community and taxpayers bear associated costs in the form of increased demand for taxpayer-funded services, including emergency medical services, homeless shelters, and other social services and community-based services; and

WHEREAS, most workers at some time during each year need limited time off from work to take care of their own health needs or the health needs of members of their families; and

WHEREAS, guaranteeing San Diego workers the right to earned sick leave will reduce recovery time from illnesses, promote the use of regular medical providers rather than hospital emergency departments, and reduce the likelihood of people spreading illness to other members of the workforce and to the public; and

WHEREAS, an increase in the minimum wage paid to employees and five annual days of sick leave could potentially increase workplace productivity, save costs through reduced employee turnover, boost income for families, restore work/family balance, boost the local tax base through increased purchasing power by workers, and reduce certain health care costs; and

WHEREAS, the San Diego City Council (Council) considered this issue at meetings of a Council standing committee and of the full Council, and considered public comment on the issue; and

WHEREAS, the Council now desires to adopt an ordinance to amend Chapter 3, of the San Diego Municipal Code, by adding Article 9, Division 1, sections 39.0101 through 39.0115, relating to the Earned Sick Leave and Minimum Wage to be provided to employees working in the City of San Diego; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3 of the San Diego Municipal Code is amended by adding Article 9, Division 1, sections 39.0101 through 39.0115, to read as follows:

Article 9: City of San Diego Earned Sick Leave and Minimum Wage

Division 1: City of San Diego Earned Sick Leave and Minimum Wage Ordinance

§39.0101 Purpose and Intent

This Division ensures that employees who work in the *City* receive a livable minimum wage and the right to take earned, paid sick leave to ensure a decent and healthy life for themselves and their families. By enabling more employees to support and care for their families through their own efforts and with less need for financial assistance from the government, and by protecting the rights of employees to care for their health and the health of their family members, the *City* can safeguard the general welfare, health, safety and prosperity of all San Diegans.

It is the purpose and intent in enacting this Division that San Diego workers be guaranteed the right to take earned sick leave. Most employees will at some time during each year need limited time off from work to take care of their own health needs or the health needs of members of their families. Guaranteeing employees earned sick leave will reduce recovery time from illnesses, promote the use of regular medical providers rather than hospital emergency departments, and reduce the likelihood of workers spreading illness to other members of the workforce and to the public.

It is also the purpose in enacting this Division to ensure that employees working in the *City* earn wages that ensure a decent and healthy life for themselves and their families. When employers do not pay a livable wage, the surrounding community and taxpayers bear costs in the form of increased demand for taxpayer-funded services, including homeless shelters. Jobs paying a decent wage

will ensure a more stable workforce for the *City*, increase consumer income, decrease poverty, and invigorate neighborhood business.

§39.0102 Citation

This Division shall be cited as the City of San Diego Earned Sick Leave and Minimum Wage Ordinance.

§39.0103 Authority

This Division is adopted pursuant to the powers vested in the *City* under the Constitution and the laws of the State of California, including, but not limited to, the police powers vested in the *City* pursuant to Article XI, section 7 of the California Constitution and California Labor Code section 1205(b).

§39.0104 Definitions

Each word or phrase defined in this Division appears in the text of this Division in italicized letters. To the extent that a federal, state, or other law is referenced within this Division, the citation includes and incorporates the law as it may be amended or renumbered in the future. For purposes of this Division, the following definitions apply:

Benefit Year means a regular and consecutive twelve-month period, as determined by an *Employer*.

Child means a biological, adopted, or foster child; a stepchild; a legal ward; a child of a *Domestic Partner*; or a child of an *Employee* standing in loco parentis.

City means the City of San Diego.

City Council means the Council of the City of San Diego.

Domestic Partners mean two adults in a relationship recognized by the State of California by filing as domestic partners under California Family Code

section 297, and who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing such registration or with an internal registry maintained by the employer of at least one of the domestic partners.

Domestic Violence means "domestic violence" as defined in California Penal Code section 13700.

Earned Sick Leave means accrued increments of compensated leave provided by an *Employer* to an *Employee* as a benefit of the employment for use by the *Employee* during an absence from the employment because of a qualifying medical condition or event, as specified in section 39.0106 of this Division.

Employee means any person who:

(a) In one or more calendar weeks of the year performs at least two hours of work within the geographic boundaries of the *City* for an *Employer*; and

(b) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as set forth in the California Labor Code and wage orders published by the California Industrial Welfare Commission or the State of California Division of Labor Standards Enforcement, or is a participant in a State of California Welfare-to-Work Program.

(c) *Employee* does not include any person who is authorized to be employed at less than the minimum wage under a special license issued under California Labor Code sections 1191 or 1191.5; any person employed under a publicly subsidized summer or short-term youth employment program, such as the San Diego County Urban Corps Program; or any

student employee, camp counselor, or program counselor of an organized camp as defined in California Labor Code section 1182.4. *Employee* also does not include any person who is employed as an independent contractor as defined by the California Labor Code.

Employer means any person or persons, as defined in California Labor Code section 18, who exercises control over the wages, hours, or working conditions of any *Employee*, or suffers or permits the *Employee* to work, or engages the *Employee. Employer* does not include a person receiving services under the California In-Home Supportive Services program pursuant to Welfare and Institutions Code section 12300.

Enforcement Office means the *City Department* or *Office* that the *City Council* designates to enforce this Division.

Family Member means a *Child, Spouse, Parent,* grandparent, grandchild, *Sibling,* or the *Child* or *Parent* of a *Spouse*.

Health Care Provider means any person licensed under federal or California law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

Minimum Wage means an hourly minimum rate to be paid to *Employees,* as defined in section 39.0107 of this Division.

Parent means a biological, foster, or adoptive parent; a step-parent; a legal guardian; or a person who stood in loco parentis when the *Employee* was a minor child.

Public Health Emergency means a state of emergency declared by any public official with the authority to do so, including officials with the *City*, the County of San Diego, the State of California, or the United States government.

Retaliation means any threat, discipline, discharge, demotion, suspension, reduction in *Employee* hours, or any other adverse employment action against any *Employee* for exercising or attempting to exercise any right guaranteed under this Division.

Safe Time means time away from work that is necessary due to *Domestic Violence*, *Sexual Assault*, or *Stalking*, provided the time is used to allow the *Employee* to obtain for the *Employee* or the *Employee's Family Member* one or more of the following:

(a) Medical attention needed to recover from physical or psychological injury or disability caused by *Domestic Violence*, *Sexual Assault*, or *Stalking*;

(b) Services from a victim services organization;

(c) Psychological or other counseling;

(d) Relocation due to the *Domestic Violence*, *Sexual Assault*, or *Stalking*; or

(e) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the *Domestic Violence*, *Sexual Assault*, or *Stalking*.

Sexual Assault means "rape" as defined in California Penal Code section 261 or "sexual battery" as defined by California Penal Code section 243.4.

Sibling means a brother or sister, whether related through half blood, whole blood, or adoption, or one who is a step-sibling.

Spouse means a person to whom an *Employee* is legally married under the laws of the State of California, or the *Employee's Domestic Partner*.

Stalking means the unlawful conduct described in California Penal Code section 646.9.

§39.0105 Accrual of Earned Sick Leave

(a) *Employers* must provide *Earned Sick Leave* to their *Employees* in accordance with this Division.

(b) *Employers* must provide an *Employee* with one hour of *Earned Sick Leave* for every thirty hours worked by the *Employee* within the geographic boundaries of the *City*, but *Employers* are not required to provide an *Employee* with *Earned Sick Leave* in less than one-hour increments for a fraction of an hour worked. *Earned Sick Leave* must be compensated at the same hourly rate or other measure of compensation as the *Employee* earns from his or her employment at the time the *Employee* uses the *Earned Sick Leave*.

(c) An *Employer* required to provide *Earned Sick Leave* pursuant to this Division, who provides an *Employee* with an amount of paid leave, including paid time off, paid vacation, or paid personal days sufficient to meet the requirements of this section, and who allows such paid leave to be used for the same purposes and under the same conditions as *Earned Sick Leave* required pursuant to this Division, is not required to provide additional *Earned Sick Leave* to such *Employee*.

(d) *Earned Sick Leave* begins to accrue at the commencement of employment or on April 1, 2015, whichever is later, and an *Employee* is entitled to

begin using *Earned Sick Leave* on the ninetieth calendar day following commencement of his or her employment or on July 1, 2015, whichever is later. After the ninetieth calendar day of employment or after July 1, 2015, whichever is later, such *Employee* may use *Earned Sick Leave* as it is accrued.

(e) *Employees* who are not covered by the overtime requirements of California law or regulations are assumed to work forty hours in each work week for purposes of *Earned Sick Leave* accrual unless their regular work week is less than forty hours, in which case *Earned Sick Leave* accrues based upon that regular work week.

(f) *Employees* may determine how much *Earned Sick Leave* they need to use, provided that *Employers* may set a reasonable minimum increment for the use of *Earned Sick Leave* not to exceed two hours.

(g) *Employers* may limit an *Employee's* use of *Earned Sick Leave* to forty hours in a *Benefit Year*, but *Employers* must allow *Employees* to continue to accrue *Earned Sick Leave* based on the formula set forth in this section. Unused *Earned Sick Leave* must be carried over to the following *Benefit Year*.

(h) If an *Employee* is transferred to a separate division, entity, or location in the *City*, but remains employed by the same *Employer*, the *Employee* is entitled to all *Earned Sick Leave* accrued at the prior division, entity, or location, and is entitled to retain and use all *Earned Sick Leave*, as provided by this Division. When there is a separation from employment and the *Employee* is rehired within six months of separation by the same

Employer, previously accrued *Earned Sick Leave* that was not used or paid out must be reinstated and such *Employee* must be entitled to use such accrued *Earned Sick Leave*.

(i) *Employers* are not required by this Division to compensate an *Employee* for unused, accrued *Earned Sick Leave*, upon the *Employee's* termination, resignation, retirement, or other separation from employment.

§39.0106 Use of Earned Sick Leave

(a) An *Employee* may use *Earned Sick Leave* for any of the following reasons:

(1) The *Employee* is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the *Employee*.

(2) The *Employee's* absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the *Employee*.

(3) The *Employee's* absence is for other medical reasons of the *Employee*, such as pregnancy or obtaining a physical examination.

(4) The *Employee* is providing care or assistance to a *Family Member*, with an illness, injury, or medical condition, including assistance in obtaining professional diagnosis or treatment of a medical condition.

(5) The *Employee's* absence is for the *Employee*'s use of *Safe Time*.

(6) The *Employee's* place of business is closed by order of a public official due to a *Public Health Emergency*, or the *Employee* is

providing care or assistance to a *Child*, whose school or child care provider is closed by order of a public official due to a *Public Health Emergency*.

(b) An *Employer* may require reasonable notice of the need to use *Earned Sick Leave*. Where the need is foreseeable, an *Employer* may require reasonable advance notice of the intention to use such *Earned Sick Leave*, not to exceed seven days notice prior to the date such *Earned Sick Leave* is to begin. Where the need is not foreseeable, an *Employer* may require an *Employee* to provide notice of the need for the use of *Earned Sick Leave* as soon as practicable.

(c) For an absence of more than three consecutive work days, an *Employer* may require reasonable documentation that the use of *Earned Sick Leave* was authorized under subsection (a) of this section. An *Employer* must accept as reasonable, documentation signed by a licensed *Health Care Provider* indicating the need for the amount of *Earned Sick Leave* taken, and an *Employer* may not require that the documentation specify the nature of the *Employee's* or the *Employee's Family Member's* injury, illness, or medical condition.

(d) An *Employer* must not require an *Employee*, as a condition of using *Earned Sick Leave*, to search for or find a replacement worker to cover the hours during which such *Employee* is using *Earned Sick Leave*.

§39.0107 Minimum Wage

(a) *Employers* must pay *Employees* no less than the *Minimum Wage* set forth in this section for each hour worked within the geographic boundaries of the *City*.

(b) The *Minimum Wage* is an hourly rate defined as follows:

(1) Starting January 1, 2015, the *Minimum Wage* is $9.75.

(2) Starting January 1, 2016, the *Minimum Wage* is $10.50.

(3) Starting January 1, 2017, the *Minimum Wage* is $11.50.

(4) Starting January 1, 2019, and each year thereafter, the *Minimum Wage* increases by an amount corresponding to the prior year's increase, if any, in the cost of living. The prior year's increase in the cost of living is measured by the percentage increase, if any, as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. The adjusted *Minimum Wage* will be announced by the *City* by October 1 of each year, and will become effective as the new *Minimum Wage* on January 1 of the succeeding year. The adjusted *Minimum Wage* will be noticed and posted as set forth in this Division.

(5) In the event that the federal or California minimum wage is increased above the level of the *Minimum Wage* in force under this section, the *Minimum Wage* under this section will be increased to match the higher federal or California wage, effective on the same date as the increase in the federal or California minimum wage takes effect.

(c) An *Employer* that meets the requirements to claim a credit against the California minimum wage under the California Labor Code or wage orders published by the California Industrial Welfare Commission or the State of California Division of Labor Standards Enforcement for meals or lodging provided to *Employees* may claim a credit in the same amount against the *Minimum Wage* required under this section.

§39.0108 Notice and Posting

(a) The bulletin and notices specified in this section will be published by the *City* and made available to *Employers* in English, Spanish, and any other language for which the San Diego County Registrar of Voters provides translated ballot materials pursuant to section 203 of the federal Voting Rights Act. The materials specified in this section will be made available to *Employers* by April 1 in 2015, 2016, and 2017; by October 1 in 2018; and by October 1 of each year thereafter:

(1) A bulletin announcing the adjusted *Minimum Wage* for the upcoming year and its effective date.

(2) A notice for *Employers* to post in the workplace informing *Employees* of the current *Minimum Wage* and of their rights to the

Minimum Wage and *Earned Sick Leave*, including information about the accrual and use of *Earned Sick Leave*, the right to be free from *Retaliation*, and the right to file a complaint with the *Enforcement Office* or a court of competent jurisdiction.

(3) A template notice suitable for use by *Employers* in compliance with this section.

(b) Every *Employer* must post in a conspicuous place at any workplace or job site where any *Employee* works the notice published each year by the *City* informing *Employees* of the current *Minimum Wage* and of their rights to the *Minimum Wage* and *Earned Sick Leave* under this Division. Every *Employer* must post this notice in the workplace or on the job site in English and any other language that is referenced in subsection (a) and spoken by at least five percent of the *Employees* at the *Employee*'s job site.

(c) Every *Employer* must also provide each *Employee* at the time of hire, or by April 1, 2015, whichever is later, written notice of the *Employer's* name, address, and telephone number and the *Employer's* requirements under this Division. The notice must be provided to the *Employee* in English and in the *Employee's* primary language, if it is a language referenced in subsection (a) and spoken by at least five percent of the *Employees* at the *Employee*'s job site. *Employers* may provide this notice through an accessible electronic communication in lieu of a paper notice.

§39.0109 Employer Records

Employers must create contemporaneous written or electronic records documenting their *Employees'* wages earned and accrual and use of *Earned Sick Leave* and retain these records for a period of at least three years. *Employers* must allow the *Enforcement Office* reasonable access to these records in furtherance of an investigation conducted pursuant to this Division. An *Employer's* failure to create and retain contemporaneous written or electronic records documenting its *Employees'* wages earned and accrual and use of *Earned Sick Leave*, or an *Employer's* failure to allow the *Enforcement Office* reasonable access to records creates a rebuttable presumption that the *Employer* has violated this section and the *Employee's* reasonable estimate regarding hours worked, wages paid, *Earned Sick Leave* accrued, and *Earned Sick Leave* taken may be relied upon.

§39.0110 Confidentiality and Nondisclosure

Employers are prohibited from requiring an *Employee* to disclose details related to the medical condition of the *Employee's* or the *Employee's Family Member* as a condition for using *Earned Sick Leave* under this Division, except where disclosure is required or authorized by federal or state law. Employers who obtain medical or other personal information about an *Employee* or an *Employee's Family Member* for the purposes of complying with *Earned Sick Leave* requirements of this Division must maintain the confidentiality of the information and must not disclose it, except with the permission of the *Employee* or as required by law.

§39.0111 Retaliation Prohibited

Employers are prohibited from engaging in *Retaliation* against an *Employee* for exercising any right provided pursuant to this Division. The protections of this Division apply to any *Employee* who reasonably and in good faith reports a violation of this Division to his or her *Employer* or a governmental agency tasked with overseeing the enforcement of any wage and hour law applicable to the *Employer*. Rights under this Division include, but are not limited to, the right to request payment of the *Minimum Wage*, request and use *Earned Sick Leave*, file a complaint for alleged violations of this Division with the *Enforcement Office* or in court, communicate with any person about any violation or alleged violation of this Division, participate in any administrative or judicial action regarding an alleged violation of this Division, or inform any person of his or her potential rights under this Division.

§39.0112 Implementation, Enforcement, and Remedies

(a) The *City Council* will designate the *Enforcement Office.*

(b) The *Enforcement Office* will have full authority to implement and enforce this Division, as set forth in an implementing ordinance to be approved by the *City Council*. The ordinance will establish a system to receive and adjudicate complaints and to order relief in cases of violations.

(c) The *City* or any person claiming harm from a violation of this Division may bring an action against the *Employer* in court to enforce the provisions of this Division. Any person claiming harm from a violation of this Division and the *City* are entitled to all legal and equitable relief to remedy any violation of this Division, including, but not limited to, the

payment of back wages withheld in violation of this Division; an additional amount equal to double back wages withheld as liquidated damages; damages for an *Employer's* denial of the use of accrued *Earned Sick Leave* in violation of this Division; reinstatement of employment or other injunctive relief; and reasonable attorney's fees and costs to any plaintiff, who prevails in an action to enforce this Division. Violations of this Division are declared to irreparably harm the public and covered *Employees* generally.

(d) Any *Employer* who violates any requirement of this Division is subject to a civil penalty for each violation of up to, but not to exceed, $1,000 per violation; except that any *Employer* who fails to comply with the notice and posting requirements of this Division is subject to a civil penalty of one hundred dollars for each *Employee* who was not given appropriate notice pursuant to that section, up to a maximum of $2,000.

(e) Violations of this Division may not be prosecuted as a misdemeanor or infraction.

(f) This Division does not create any right of action or cause of action for damages against the *City* in its enforcement of this Division.

(g) Submitting a complaint to the *Enforcement Office* is neither a prerequisite to nor a bar to bringing a private cause of action.

(h) This section is not intended to supersede any applicable, current or future state or local law, rule, regulation, or approved memoranda of understanding binding on the *City*, as a public agency employer, and its *Employees*.

§39.0113 Compliance with Legal Agreements

This Division must not be interpreted to modify any obligation of an *Employer* to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing higher wages or more *Earned Sick Leave* to an *Employee*.

§39.0114 No Effect on Higher Wages or More Earned Sick Leave

This Division must not be construed to discourage or prohibit an *Employer* from providing higher wages or more *Earned Sick Leave* to its *Employees*.

§39.0115 Effect of Invalidity; Severability

If any section, subdivision, paragraph, sentence, clause, phrase, or other portion of this Division is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Division, which shall continue in full force and effect.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____. REFERENDUM OF ORDINANCE REGARDING EARNED SICK LEAVE AND MINIMUM WAGE. Shall Ordinance O-20390 be approved, establishing that employers are to compensate employees working in the City of San Diego with earned sick leave of up to forty hours a year and a minimum wage of $10.50 an hour upon the Ordinance's effective date, $11.50 an hour on January 1, 2017, and increasing with the cost of living on January 1, 2019 and annually thereafter?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. A full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 9. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Sharon B. Spivak
Deputy City Attorney

SBS:jdf
01/25/2016
Or.Dept:Council
Document No.: 1199599

Enforcing City Minimum Wage Laws in California:

Best Practices and City-State Partnerships

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UC Berkeley Center for Labor Research and Education

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ABOUT THE UCLA LABOR CENTER

For over fifty years, the UCLA Labor Center has created innovative programs that offer a range of educational, research, and public service activities within the university and in the broader community, especially among low-wage and immigrant workers. The Labor Center is a vital resource for research, education, and policy development to help create jobs that are good for workers and their communities, to improve the quality of existing jobs in the low-wage economy, and to strengthen the process of immigrant integration, especially among students and youth.

ABOUT THE UC BERKELEY CENTER FOR LABOR RESEARCH AND EDUCATION

Founded in 1964, the Center for Labor Research and Education (Labor Center) at the University of California, Berkeley, works on the most pressing economic challenges affecting working families in California and communities across the country. The Labor Center provides timely, policy-relevant research on labor and employment issues for policy makers and stakeholders, and conducts trainings for a new, diverse generation of worker leaders.

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I. Introduction

California leads the nation on one of the most significant trends in U.S. labor standards policy in decades. Across the country but especially in California, cities are passing their own minimum wage laws, often with significantly higher wages than currently exist at the state or federal level. For example, last year San Francisco raised its minimum wage to $15.00 an hour by 2018. This spring, the Los Angeles City Council voted to establish a city minimum wage that will reach $15.00 an hour in 2020 for businesses with more than 25 employees (and in 2021 for smaller businesses); Los Angeles County recently followed suit. San Jose adopted a city minimum wage in 2012 and smaller cities have recently done the same, including Oakland, Berkeley, Richmond, Sunnyvale, Emeryville, Mountain View, Santa Clara, and San Diego.[1] All signs point to additional minimum wage increases in cities throughout California in the next several years.

As cities begin to implement these minimum wage laws, the critical question of how best to enforce them rises to the forefront. Delivering on the promise of higher wages hinges on our ability to put robust enforcement systems in place to fight the chronic wage theft that low-wage workers experience far too often.

Unlike state or federal minimum wage laws, which already have an enforcement system in place, city minimum wage laws raise the twin challenges of creating new enforcement systems at the city level and coordinating with state enforcement efforts. Those tasks are further complicated by the range of city sizes and capacities, as well as the already stretched resources for enforcement at the state level.

Fortunately, policymakers and advocates increasingly understand the need for enforcement and can build on good existing models. In California, recent city minimum wage laws all include a set of strong legal tools to help with enforcement. Best practices have emerged from San Francisco, the city with the oldest local minimum wage law and the leading example of a robust city enforcement agency.

The goal of this report is to lay out a framework for enforcement of city minimum wage laws in California and to explore how cities can best coordinate with state enforcement efforts. We start by giving an overview of the problem of wage theft. We then discuss in detail the three pillars of an effective enforcement system: strong legal tools in the minimum wage laws themselves; where possible, a well-staffed local agency that is committed to proactive enforcement strategies; and ongoing partnerships with community-based organizations. We pay special attention to identifying options for funding enforcement and discuss in detail the constraints faced by small cities. We conclude by proposing a model of city-state collaboration on enforcing minimum wage laws in California.

II. The Problem of Wage Theft

Wage theft occurs when workers are not paid the wages to which they are legally entitled. This can occur when workers receive payment at a rate below the legal hourly minimum, whether paid by the hour, by the piece, by the week, or by the project. Wage theft also occurs when employees are not paid for off-the-clock work, are not properly paid overtime, or fail to get the required rest and meal breaks, among other violations.

Significant and extensive minimum wage violations have been documented around the country and in cities throughout California. An analysis of worker surveys conducted by the Census and Bureau of Labor Statistics estimates that in California, minimum wage violations occur in any given week in 11 to 12 percent of all the low-wage jobs in the state (Eastern Research Group 2014). While this estimate already represents a significant amount of wage theft, experience suggests that official government surveys undercount workers who are especially vulnerable to wage theft, such as those working off the books or who are undocumented.

[1] San Diego passed a local minimum wage law last year; it is currently on hold pending the results of a referendum in 2016.

Other estimates come from surveys that use alternative sampling strategies much more likely to capture the full range of workers in the low-wage labor market. The best such study to date is a large representative survey of low-wage workers in Los Angeles in 2008, which found that 30 percent had been paid below the minimum wage during the previous week and 88 percent had at least one pay-related violation in the previous week. The amount of underpayment due to minimum wage violations assuming a full-year work schedule averaged $1,135 a year per worker, or 6.9 percent of earnings. Counting all pay-based violations, such as unpaid overtime and off-the-clock work, workers lost $2,070 per year, or 12.5 percent of earnings. Violations occurred across industries and occupations, with above-average rates of minimum wage violations in garment manufacturing, domestic service, building services, and department stores (Milkman, Gonzalez and Narro 2010).

Additional evidence comes from community-based surveys of particular groups of workers in specific industries. In San Francisco's Chinatown, for example, half of restaurant workers surveyed in 2008 reported earning less than the minimum wage (Chinese Progressive Association 2010). Surveys of day laborers in Los Angeles and Orange Counties indicate that almost half of workers have experienced non-payment of wages, and a similar rate was reported by the Government Accountability Office for day laborers in 2002 (Valenzuela 1999, Government Accountability Office 2002; see National Employment Law Project 2013a for a full inventory of research on workplace violations).

Given this high prevalence of workplace violations, realizing the benefits of higher minimum wage levels requires strong enforcement language in the law itself, a proactive city enforcement agency where possible, and ongoing enforcement partnerships with community groups (see Yoon and Gebreselassie [2015] for a more in-depth treatment). We next discuss each of these three pillars of enforcement in turn.

III. Provisions in the Law Itself

The bedrock of strong enforcement is the set of legal tools included in the law itself to ensure compliance. Over the past several years, a consistent model of strong enforcement tools has emerged in California's local minimum wage laws. We briefly summarize this core legal framework that should be included in any future city minimum wage laws, as well as several provisions, such as wage liens and criminal penalties, that are less common in California but that have been included in minimum wage laws elsewhere. For a summary of which provisions are included in which laws, see Table 1.

Fines, penalties, and liquidated damages:

Employers have little incentive to comply with minimum wage laws if the only consequence of violation is payment of wages due (Meyer and Greenleaf 2011). Citations that carry penalties or fines, as well as "liquidated damages" (sums of money awarded to workers in addition to the underlying wages owed), increase the cost of noncompliance and can incentivize prompt payment. Penalties that accrue over time also provide an incentive for speedier repayment. Penalties can be either mandatory or discretionary. Some legal experts argue that penalties should be mandatory to create the proper incentives for deterrence; others argue that allowing agencies discretion to assess penalties can help them negotiate better settlements with employers, resulting in full back wages and a more prompt resolution of the case.

Eight of California's 12 local minimum wage laws include penalties or fines payable to the worker of $50 per violation per worker per day, from the first day that the unpaid wages were due to the day on which they were paid back in full. The city of Los Angeles provides for $100 per violation per employee per day, while Oakland and San Diego allow for up to $1,000 per violation per employee per day. San Diego's minimum wage law also provides for double liquidated damages—twice the amount stolen from the worker—to be awarded for minimum wage violations (National Employment Law Project 2011). In general, higher penalties combined with a higher chance of detection increase the incentive to comply (Weil 2005). Other U.S. laws include substantially higher penalties to promote compliance. For

example, violations of the Americans with Disabilities Act carry a $75,000 fine for first violations;[2] Clean Water Act penalties range from $2,500 per day to $25,000 per day for first time violators (33 U.S.C. § 1319(1)).

Private right of action:

A private right of action allows workers to sue their employers directly for unpaid wages, instead of filing an administrative complaint and awaiting results. The federal Fair Labor Standards Act, most states (Meyer and Greenleaf 2011), and nearly every city have a private right of action enabling workers to directly sue their employers for unpaid wages, including all 11 municipalities in California that have enforcement provisions in their minimum wage ordinance (Los Angeles County voted to increase its minimum wage in September; its enforcement provisions are currently being drafted). In addition, the best minimum wage laws include provisions awarding reasonable attorneys' fees and costs to employees whose rights have been violated, a necessary provision to encourage attorneys to take cases (Yoon and Gebreselassie 2015).[3]

Retaliation protection:

Fear of employer retaliation is a significant reason that violations go unreported (Bernhardt et al. 2009). Strong anti-retaliation protections in the law can help mitigate this problem.[4] Employers who fire, suspend, demote, or take any other "adverse action" against a worker for exercising his or her right to be paid in accordance with the law should have to prove their action was justified and not retaliatory. This is called a "rebuttable presumption" of retaliation. In California, every municipality that has raised its minimum wage except San Diego and Santa Clara created a rebuttable presumption of retaliation when an employer takes "adverse action" against an employee within three months of that worker's assertion of his or her rights. Oakland extends this period during which an employer's action is presumed retaliatory to six months following a worker's protected activity, and also holds employers to a very high standard of evidence—"clear and convincing"—to prove their action was permissible and not retaliatory. (Los Angeles County's provisions are currently being drafted.)

In addition, the strongest anti-retaliation provisions protect a worker from the moment he or she speaks to anyone about his or her rights—including co-workers, a community organization, or a union—even before the worker decides to approach management or file a complaint. In California, nine cities explicitly protect workers in their minimum wage laws from the moment they speak to anyone about their rights.

Finally, strong anti-retaliation laws increase the costs of retaliation to employers through an explicit fine for such actions. Berkeley, San Francisco, and Los Angeles fine employers at least $1,000 for retaliation. In San Francisco, repeat violators face up to $10,000 for retaliation.

Business license revocation:

Another strategy to increase compliance and prompt repayment is to involve other city departments or agencies

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[2] See http://www.ada.gov/civil_penalties_2014.htm.

[3] All but one city in California provide attorneys' fees and costs to workers with successful complaints in their minimum wage laws; the city of Emeryville allows employers to recover their attorneys' fees if the worker is unsuccessful, which may discourage workers from bringing complaints for fear of incurring their employer's defense costs.

[4] Recent state legislation provides California workers with strengthened protections against employer retaliation, including specific protections for immigrant workers. Effective January 1, 2014, employers found by the Labor Commissioner or a court to have retaliated by threatening to report the immigrant status of a worker or a worker's family member may face up to $10,000 penalties and have their business license suspended or revoked. See Cal. Lab. Code § 98.6(b)(3) (creating up to $10,000 penalty for each instance of retaliation); Cal. Labor Code § 244(b) (prohibiting reports or threats to report immigration status because an employee has exercised a right under the California Labor Code); and Cal. Bus. & Prof. Code § 494.6 and Cal. Labor Code § 1019 (a court may order the suspension of an employer's business license for immigration-related retaliation). Attorneys who make such threats may be disciplined or disbarred. Cal. Bus. & Prof. Code § 6103.7. Finally, these threats may be prosecuted as extortion. Cal. Penal Code § 518. For a full explanation of these recent changes, see National Employment Law Project (2013b).

in revoking or suspending business licenses, permits, or registration certificates until a wage violation is remedied (National Employment Law Project 2011; Gleeson, Taube and Noss 2014). Most California cities with higher minimum wages—all but San Diego and Emeryville—have adopted this strategy. Nationwide, Chicago, Seattle, and Washington, D.C. do likewise. Other cities, like Houston and El Paso, which have implemented wage theft provisions though not higher minimum wages, include wage theft expressly as a reason to rescind contracts with the city and debar contractors from future consideration or renting city-owned space (Gleeson, Taube and Noss 2014).

Experience suggests that these types of business license provisions can establish a powerful incentive to comply. For example, San Francisco's Office of Labor Standards Enforcement (OLSE) has had success working with the health department to consider outstanding wage complaints before granting health permits to restaurants (Dietz, Levitt and Love 2014). While restaurants account for one-half of all complaints for minimum wage violations filed in San Francisco, OLSE has revoked just one permit in the nearly nine years since the city amended its minimum wage law to revoke violators' permits and licenses—strong evidence that the threat of revocation causes employers to comply or resolve disputes promptly (Office of Labor Standards Enforcement 2013, Love 2015). Localities that cannot identify existing licenses that can be leveraged in this way could consider creating licensing requirements either for all businesses or for industries with particularly high rates of wage theft.

Notice posting and record keeping:

California local minimum wage laws recognize the importance of informing both employers and employees of the minimum wage. Cities must publish their updated minimum wage rates, and employers must post the minimum wage in relevant languages for workers to see. Employers are also required to keep payroll records and provide access to workers, advocates, and investigators. In Berkeley, Mountain View, San Diego, San Francisco, San Jose, Richmond, Santa Clara, and Sunnyvale, an employer's failure to provide access to payroll records creates a presumption that an employee's report of wages and hours is correct. Likewise, Berkeley, Emeryville, San Francisco, San Diego, and Los Angeles impose fines for an employer's failure to post notice, as well as for failure to allow access to inspect payroll records. When an establishment is under investigation, cities can require that the employer post a workplace notice to that effect, visible to employees. San Francisco's OLSE notes that this can be especially important in workplaces with many employees and multiple shifts (Pastreich 2015).

Outreach and education:

San Francisco, Los Angeles, and Seattle have dedicated resources to fund outreach and education to workers and employers; Oakland and San Diego plan to do the same (Office of Labor Standards Enforcement 2013; City of Seattle 2015; City of Los Angeles Bureau of Contract Administration 2015; Oakland City Auditor 2014; San Diego Office of Independent Budget Analyst 2014). These cities direct funds to community-based organizations with cultural and linguistic expertise, whose outreach builds community trust and deepens awareness of wage laws (San Francisco Wage Theft Task Force 2013; Ichikawa and Smith 2014). We will elaborate on the role of community groups in Section V.

Criminal penalties:

Several municipalities (including Seattle and Santa Fe) criminalize wage theft as a misdemeanor. Threat of jail time, bench warrants, and court fees and fines can deter violators and bring uncooperative parties to the table (National Employment Law Project 2011). In California, where wage theft is a seldom-prosecuted crime under state law, local municipalities should streamline its prosecution by creating "strict liability" misdemeanors for particularly egregious wage theft. Like selling alcohol to minors, strict liability misdemeanors require no intent to violate (California Penal Code Section 484).

Wage liens:

A lien is a temporary hold on the property of a debtor until the debt is paid. Liens against employers' property (such as real estate, accounts receivable, and inventory) help guarantee that workers receive unpaid wages by securing

Table 1. Local Minimum Wage Enforcement Provisions across Jurisdictions

	Enforcement agency	Fines, penalties, & damages	Private right of action	Retaliation protection	Revoke licenses/ permits/ contracts	Posting & payroll access	Outreach & education	Criminal penalties	Liens
California Cities or Counties									
Berkeley	Y	Y	Y	Y	Y	Y	Y		
Emeryville	Y	Y	Y	Y		Y			
Los Angeles	Y	Y	Y	Y	Y	Y	Y		Y
Los Angeles County*									
Oakland	Y	Y	Y	Y	Y	Y	Y		
Mountain View	Y	Y	Y	Y	Y	Y			
Richmond	Y	Y	Y	Y	Y	Y			
San Diego	Y	Y	Y	Y		Y	Y		
San Francisco	Y	Y	Y	Y	Y	Y	Y		Y
San Jose	Y	Y	Y	Y	Y	Y			
Santa Clara	Y	Y	Y	Y	Y	Y			
Sunnyvale	Y	Y	Y	Y	Y	Y			
Other Localities									
Albuquerque, NM			Y	Y		Y			
Bernalillo County, NM			Y			Y			
Birmingham, AL	Y	Y	Y	Y	Y				
Chicago, IL	Y	Y	Y	Y	Y	Y			
Johnson County, IA		Y							
Las Cruces, NM			Y			Y			
Louisville, KY		Y	Y						
Montgomery County, MD	Y			Y					
Prince George's County, MD									
Santa Fe, NM	Y		Y	Y	Y	Y		Y	
Santa Fe County, NM	Y		Y	Y	Y	Y		Y	
Seattle, WA	Y	Y		Y	Y	Y	Y	Y	
Washington DC	Y	Y	Y	Y	Y	Y		Y	Y
Portland, ME	Y	Y	Y	Y		Y			

*Los Angeles County voted September 29, 2015, to raise its minimum wage; it is currently drafting enforcement provisions.

those assets to prevent their disappearance (Sirolly 2015). In California, 83 percent of workers with final judgments for unpaid wages from the State Division of Labor Standards Enforcement (DLSE) never collect any payment (Cho, Koonse and Mischel 2013). A lien on the property of these employers would pressure them to pay and help prevent unscrupulous employers from ignoring wages owed, hiding assets, or simply disappearing. Evidence from Wisconsin, whose wage lien statute allows liens to be filed at the beginning of the complaint process rather than only after a judgment has been issued, indicates that this process results in increased collection of wages due (Cho, Koonse and Mischel 2013). A number of other states, including Alaska, Texas, and Wisconsin, have legislation enabling workers to impose wage liens (National Employment Law Project 2011). In California, such wage liens will become available to the Labor Commissioner on January 1, 2016, under the provisions of Senate Bill 588, for all wage claims against an employer who already has an outstanding judgment, refuses to pay that judgment, and fails to post a bond for unpaid wages.[5] Wage liens should also be pursued at the local level. Wage enforcement agencies in San Francisco and Los Angeles may file a lien on employer property where that employer refuses to pay a citation for unpaid wages.

IV. Creating a Proactive Enforcement Agency

Workers whose wages are stolen can do one of two things: file a complaint with a government agency, or find a lawyer to sue their employer directly (for more details on the state enforcement process, see Appendix A). Lawyers for hire are called "the private bar." Private attorneys alone cannot address wage theft to scale.[6] First, low-wage workers have limited access to culturally and linguistically competent employment attorneys. Second, the value of the average complaint (less than $2,000)[7] dramatically reduces profit for private attorneys, even when taking 40 percent of the recovery. Finally, difficulty collecting from resistant employers further disincentivizes attorneys from taking wage theft cases, as it jeopardizes their ability to recover their attorneys' fees and earn anything for their effort. For these reasons, public enforcement plays a central role in ensuring that workers receive the wages they are owed.

However, state enforcement resources are currently insufficient to fully enforce California's new city minimum wage laws. State (and federal) enforcement offices are already understaffed and struggle to provide thorough investigations and timely collections (Government Accountability Office 2009; Su 2013; Bobo 2009), let alone deter wage theft with proactive enforcement and a credible expectation of compliance checks (Fine and Gordon 2010, Ichikawa and Smith 2014). In particular, California's state enforcement offices are limited not only in their resources but also in their legal ability to collect wages associated with local minimum wage laws—though after January 1, 2016, a new state law takes effect, Assembly Bill 970, that amends the labor code to allow for enforcement up to the local minimum.[8] At the time of publication, low-wage workers who file reports of labor law violations with the Labor Commissioner's Bureau of Field Enforcement (BOFE, the state's "whistleblower" unit; see Appendix A) will recover only that which is owed to them under state minimum wage law, not under their city's higher minimum wage rate.

Cities with sufficient resources and administrative infrastructure should establish a local enforcement agency to realize the economic and social benefits from raising the minimum wage. San Francisco has both the oldest local minimum wage ordinance in the state and the most robust local enforcement agency. The record in San Francisco suggests that local enforcement agencies can collect unpaid wages at a higher rate than the state agency. The city's Office of Labor

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[5] Senate Bill 588 contains multiple provisions to address wage theft. First, liens, it allows the Labor Commissioner to target employers who refuse to pay outstanding judgments through mandatory bonds for unpaid wages, and stop work orders. S.B. 588, § 4-5, Reg. Sess. (Cal. 2015). It closes loopholes in corporate law that help evade liability by creating individual and successor liability for unpaid wages. S.B. 588, § 4(e), Reg. Sess. (Cal. 2015). It creates joint liability extending to businesses who contract for labor in property services and long term care (two industries with exceptionally high rates of wage theft). S.B. 588, § 9, Reg. Sess. (Cal. 2015). Finally, SB 588 gives the Labor Commissioner the power to seize ("levy") assets of a violator directly, on behalf of the worker. S.B. 588, § 1, Reg. Sess. (Cal. 2015).

[6] An important goal, not the focus of this policy brief, is to increase the volume of wage theft cases taken by private attorneys.

[7] Authors' analysis of wage complaints filed with the DLSE, 2008-2011.

[8] Currently, the state Bureau of Field Enforcement can issue citations but only for payment up to the state minimum wage; the Department of Labor Standards Enforcement Wage Claim Adjudication unit can adjudicate higher minimum wages, but it is up to the worker to collect on the judgment.

Standards Enforcement's thorough investigations and strong record of successful collection of back wages makes them a model for other cities. In this section we draw on the San Francisco experience in developing, staffing, and funding an office, and describe agency functions and various enforcement strategies.

Agency Functions

Creating, funding, and staffing a local office dedicated to enforcement is vital to implementing an effective minimum wage law (there are many options for where such an office could fit within existing government departments; the best location will depend on local context). A dedicated city office serves as a centralized place to educate workers and employers, administer complaints, and collect wages due. Specifically, local enforcement entities can:

- Educate and annually notify employers about the city's minimum wage law
- Receive, investigate, and adjudicate complaints for unpaid wages and retaliation in a timely manner
- Cite and collect administrative fees and penalties
- Conduct proactive audits and investigations targeting employers and industries with high rates of noncompliance
- Coordinate with other agencies to leverage business licenses and permits
- File liens on behalf of claimants on employer property to secure those assets and prevent them from disappearing before or during investigation
- Contract with community groups to conduct targeted outreach and education, and regularly communicate the status of ongoing cases and investigations
- Foster effective partnerships with relevant state and local agencies and departments
- Publicize enforcement actions to increase the deterrent effect of enforcement
- Create and enforce a protocol to address language needs of claimants

Agency Development

Stakeholders should be aware that building an effective office takes time. The appropriate performance metrics will likely change as an office moves from the initial start-up phase to full implementation. Metrics include:

Number of complaints: Cities cannot expect a high volume of complaints immediately. During the first few years of implementation, a low volume of complaints may stem from workers' lack of knowledge about the new law or their rights, or the risks in filing a complaint. It takes time to build the trust necessary for effective enforcement. Trust grows by developing strong relationships with worker and community groups, as discussed below, and creating a track record of successfully winning back wages for workers.

Training: A new office may need more than one year to scale up because of the time involved in finding and training investigators and establishing policies and procedures. In particular, cities should focus on training new investigators to be effective. For example, San Francisco's enforcement agency initially worked with the state's enforcement agency to train new investigators, who accompanied their more experienced state counterparts on industry-focused audits of low-wage workplaces. The city also adopted key policies and procedures from the state, which were then modified and expanded over time (Levitt 2015).

Outreach and education: While the basic functions of a local enforcement office remain constant, the focus may change over time. Cities should emphasize outreach and education in the first several years of the minimum wage law's implementation. For example, San Jose officials stressed the need for community-led outreach and education to generate interest and cooperation with investigators (Grayson 2015, Hickey 2015). In addition, proactive audits and investigations may be an effective way to demonstrate the need for enforcement.

Staffing

Staffing depends on local employment conditions. Other jurisdictions can provide a baseline, but the particulars of economy and geography matter. More resources may be appropriate for areas with higher concentrations of low-wage jobs, for industries with poor track records of compliance and high numbers of immigrant workers, and for convoluted employer-employee relationships, such as the use of "temp" or staffing agencies, subcontractors, or independent contractors. Large volumes of small employers within larger geographic areas will also require more resources to achieve the same level of enforcement.

Unfortunately, very little research exists to help estimate the ideal number of enforcement staff for a given city. San Francisco currently has 5.5 investigators who enforce its minimum wage and paid sick leave ordinances, for a labor force of approximately 600,000, or about 110,000 workers per investigator. However, San Francisco has a relatively low concentration of low-wage workers. Focusing just on the 142,000 low-wage workers projected to benefit from its minimum wage increase by 2018, San Francisco has approximately 25,000 low-wage workers per investigator. But this ratio should be treated only as a rough minimum benchmark, because San Francisco has not been able to evaluate what proportion of total violations the agency addresses. Moreover, its enforcement staff works at full capacity responding to complaints; the agency would need to increase staffing in order to conduct proactive enforcement strategies (see below). Los Angeles has recently proposed a target of 19 investigators at full implementation of its law in 2020, resulting in a ratio of 32,000 low-wage workers per investigator (City of Los Angeles Bureau of Contract Administration 2015). But again, little research exists to assess the adequacy of these staffing levels. This will be an important area for future monitoring and research as an increasing number of cities implement and enforce their own minimum wage laws.

Funding

Creating and staffing an enforcement agency requires resources. San Francisco's Office of Labor Standards Enforcement designates approximately $1.4 million and 5.5 investigator positions to enforce its minimum wage and paid sick leave ordinances (San Francisco Office of Labor Standards Enforcement 2013). Seattle's Office of Labor Standards allocates $1.2 million and 4 investigator positions to enforce its minimum wage ordinance (Bull 2015, Seattle Office for Civil Rights 2015). The City of Los Angeles allocated $700,000 this fiscal year to create 5 new positions, and plans to grow its new wage enforcement office to a total staff of 31 (City of Los Angeles Bureau of Contract Administration 2015). All three cities draw from their general funds for enforcement.

There are at least five different sources to consider for funding local enforcement:

General fund: A city's general fund money can be used to fund enforcement activities. However, this approach requires enforcement to compete with all the other funding priorities of the city and renders funding particularly susceptible to changes in political leadership.

Penalties and fines: Cities can recover some of the costs of enforcement through penalties and fines charged to employers who violate the law. San Francisco, which has the longest track record, recovered $153,828 in penalties in 2013 (San Francisco Office of Labor Standards Enforcement 2013). High penalties and fines for violators have the benefit of increasing the incentive to comply with the law in the first place. However, collecting back wages owed to the workers should be the first priority of enforcement. Collecting even these back wages can be difficult—the state collects only a fraction of back wages due—and sometimes enforcement agencies use fines and penalties as leverage to bring recalcitrant employers to the table. An enforcement regime that relies too heavily on penalties and fines could end up perpetually underfunded if collecting those fines and penalties proves difficult. In addition, reliance on fees and fines makes it difficult to predict agency budgets from year to year. Finally, over-reliance on fines and penalties may incentivize agencies to target employers who can pay over those who cannot, regardless of the merit of cases against the latter.

Taxes, or business license and registration fees: Businesses that follow the law benefit from strong enforcement

because they are less likely to be undercut by unscrupulous businesses. For this reason, imposing a small fee on all employers (or employers in high-violation industries) to recover reasonable regulatory costs of wage enforcement makes sense.

Regulatory fees to fund enforcement appear throughout the California Labor Code. For example, carwashes, farm labor contractors, garment contractors, talent agencies, and employers in many other industries pay fees collected by the state's Division of Labor Standards Enforcement, regardless of whether they have violated the law. Similarly, workers' compensation assessments fund the costs of work-related injuries in all workplaces. More broadly, employers pay fees regardless of their own compliance to recover the costs of industry-wide damage to the environment or consumer health.[9]

Employer-funded enforcement has wide and longstanding precedent. However, in California, Proposition 26 (passed in 2010) imposes restrictions on taxes and fees. Any employer fee must not exceed the real cost necessary to support enforcement, and must bear a reasonable relationship to the employers' burdens on the regulation. Careful crafting of regulatory fees, such as a scale proportionate to the employer's size or number of hours worked, is likelier to withstand scrutiny than a flat fee, for example.

Cross-jurisdictional funding: Rather than bear the cost of creating an enforcement agency out of whole cloth, smaller cities and jurisdictions may wish to contract with neighboring cities or counties for enforcement. Other models might include multiple small cities in a county co-funding a county-wide enforcement agency.

Contracts or grants from state and federal enforcement agencies: State and federal agencies can elect to contract with local entities to perform some or all of their enforcement responsibilities. For example, in California the state Department of Insurance provides grants to local district attorneys for fighting workers' compensation insurance fraud. Workers' compensation insurance premiums (paid by employers) finance the grants. The 2015 Little Hoover Commission report on the underground economy specifically recommends replicating this funding mechanism for wage and hour enforcement (Little Hoover Commission 2015). Similarly, the U.S. Equal Employment Opportunity Commission (EEOC) is authorized by statute to use the services of state and local "Fair Employment Practices Agencies" (FEPAs) to enforce anti-discrimination laws. A "work sharing agreement" provides a FEPA with the requisite authorization and funding to provide such assistance.[10] These grants and contracts provide a model for state funding of local entities; additional state-level funding can and should be directed to local enforcement for investigation of workplace violations.

Enforcement Strategies

As growing numbers of cities and states raise their minimum wages, enforcement strategies are evolving to meet the challenges of the 21st century workplace and maximize impact given constrained funding. While handling incoming complaints from workers will always constitute a core function of enforcement agencies, two important strategies have emerged in recent years that increase the effectiveness of minimum wage enforcement.

Company-wide investigations: When responding to a worker complaint, the San Francisco Office of Labor Standards Enforcement (OLSE) and the state Bureau of Field Enforcement (BOFE, the state's "whistleblower" unit; see Appendix A) investigate the entire workplace on behalf of all workers. This practice allows the worker who came forward to

[9] Ohio Rev. Code § 3737.87 et seq.; see also State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow, 579 N.E.2d 705 (Ohio 1991) (Ohio Supreme Court upholding the validity of underground storage tank assessment funds to assure the cleanup of leaks from underground storage tanks); Fla. Stat. § 766.301; see also Coy v. Fla. Birth-Related Neurological Injury Comp. Plan, 595 So. 2d 943 (Fla. 1992) (Florida Supreme Court concluding that there was a rational basis for the statutory assessment under "NICA" of all physicians, even though they did not practice obstetrics); Martin, NICA-Florida Birth-Related Neurological Injury Compensation Act: Four Reasons Why This Malpractice Reform Must Be Eliminated, 26 Nova L.Rev. 609 (2002); Studdert & Brennan, Toward a Workable Model of "No-Fault" Compensation for Medical Injury in the United States, 27 Am. J.L. & Med. 225 (2001).

[10] For example, the city of Austin Equal Employment Fair Housing Office, which serves a city of 885,400 people, has a contract with the EEOC for $107,600 to process 152 charge resolutions and intake services for 148 charges.

remain anonymous for longer, which may provide some protection from retaliation. Because violations rarely occur for a single employee, this approach also allows investigators to recover back wages for everyone affected (Dietz, Levitt and Love 2014).

Proactive investigations: Many jurisdictions rely solely on complaints to enforce wages, even though the most vulnerable and exploited workers are among the least likely to complain (Weil and Pyles 2005). Moreover, complaint-driven enforcement is less effective at deterrence than targeted investigations (Ichikawa and Smith 2014). In response, federal, state, and city enforcement offices increasingly conduct targeted, proactive investigations of industries and employers. As part of a proactive strategy, random payroll audits in a given industry or region can help generate data about the scale of violations and guide the strategic focus of investigations, as well as create a mechanism to assess effectiveness of enforcement strategies over time (National Employment Law Project 2011).

Proactive investigations already take place at labor enforcement agencies across the country. The Wage and Hour Division of the U.S. Department of Labor increased its directed investigations from 27 percent of investigations in 2009, to 44 percent in 2013, and focuses those investigations on priority industries (Weil 2014). In California, the Janitorial Enforcement Team works alongside the Maintenance Cooperation Trust Fund to monitor workplace conditions in the janitorial industry, which is full of complex subcontracting relationships (Fine and Gordon 2010). In New York, the state Department of Labor uncovered $6.6 million in unpaid wages through a proactive investigation of the car wash industry (New York State Department of Labor 2008).

Compliance incentives: A largely unexplored policy strategy is to create incentives for employers to remain violation-free. Examples of such incentives might include expedited business license renewals or other certifications controlled by cities. In the case of businesses that have been found to violate the law, cities could consider waiving fees and fines if the employer is willing to be subject to ongoing monitoring. This type of experimentation with incentives could be a fruitful avenue for strengthening local enforcement regimes.

Small Cities

Some localities may be too small to create and fund an entire enforcement agency, but still have a vested interest in strong enforcement of their minimum wage law. Few proven models exist to guide small-city enforcement, so this largely unexplored policy terrain needs to be developed as smaller cities increasingly adopt local minimum wage laws (especially in California).

The default scenario is that small cities simply rely on the state agency for core enforcement activities, including:

- Investigating and adjudicating wage and hour complaints
- Issuing citations and collecting administrative fines and penalties
- Conducting proactive investigations that target industries with high rates of violations

But experience suggests that localities should not rely solely on state enforcement, both because of state resource constraints and because local knowledge—of businesses, industries, community groups, and local officials—is a valuable tool in effective enforcement.

Specifically, even if they do not create their own agency, small cities should at a minimum designate a city official to act as a liaison between workers, the state agency, and other stakeholders. Such an official would:

- Respond to workers' questions and complaints of minimum wage violations or retaliation and direct them to legal services groups and/or the DLSE
- Troubleshoot problems with current cases, and advocate with the state agency
- Educate and annually notify employers about the city's minimum wage law
- Fund and partner with local community groups and legal services providers to conduct worker outreach

and education (see next section)
- Coordinate media campaigns to educate the public broadly, particularly where few community groups exist to conduct outreach and education
- Partner with the state to strategize proactive enforcement audits
- Partner with the state to create, maintain, and make publicly available a database to track final judgments for unpaid wages

Beyond relying on the state enforcement agency, policymakers might also consider regional collaborations on enforcement. For example, two smaller cities in California (Sunnyvale and Mountain View) have contracted enforcement of their minimum wage provisions to San Jose. While this is a potentially promising strategy, smaller cities must ensure that the larger city they are contracting with has the capacity to take on additional enforcement (as of mid-2015, San Jose had only one minimum wage investigator). Alternatively, several smaller cities might pool resources to fund a county-wide enforcement agency. Regional collaboration on enforcement will be easier if cities also align the content of their ordinances (i.e., the wage levels, the dates on which increases occur, phase-ins, and any exemptions).

V. Role of Community Organizations

Successful enforcement of labor laws depends fundamentally on building trust with workers. Mistrust of government institutions can deter workers from filing complaints or cooperating once an investigation starts (Dietz, Levitt and Love 2014). Many of the most vulnerable workers—low-wage workers from immigrant communities and communities of color—feel wary of government institutions but do trust organizations within their community (Gleeson 2009). As Donna Levitt, manager of San Francisco's OLSE, has acknowledged, "workers feel more comfortable going to a community group than a government agency" when they are mistreated on the job (Meyerson 2015).
Enforcement agencies can leverage the complementary strengths of community-based organizations (CBOs) and legal services providers in order to increase effectiveness and reach. The linguistic, cultural, and industry knowledge within CBOs make them valuable partners in educating workers about their rights, building trust between workers and investigators, and providing knowledge of the particular industry dynamics at play (Fine and Gordon 2010, Fine 2014, Little Hoover Commission 2015). CBOs can also play an important role in addressing retaliation by, for example, organizing "walk backs" that show community support for workers who have been retaliated against.

San Francisco funds $482,000 in contracts for immigrant and low-income community organizations to conduct worker outreach and education and to help develop cases. One of the most significant cases in the city, a $4 million settlement with dim sum restaurant Yank Sing, was brought about through intense work by the Chinese Progressive Association. The organization was able to build on its existing relationship with workers, many of whom were monolingual Chinese speakers, so that workers felt safe coming forward and pressing their case. While OLSE staffers themselves have a broad range of language abilities and experience in various industries, they still see CBOs as important and complementary partners (Dietz, Levitt and Love 2014). In fiscal year 2013-14 the office collected more in back wages and interest from cases filed with the help of CBOs than from those generated by worker complaints alone (Love 2015).

Because of the success in San Francisco, Los Angeles and Seattle are funding community groups to do minimum wage-related worker outreach and education. Los Angeles plans to allocate $700,000 annually to outreach and education and is currently determining the amount to allocate to contracts; Seattle recently awarded bids for community contracts of $1 million (Los Angeles Bureau of Contract Administration 2015; Seattle Community Outreach and Education Fund Request for Proposals 2015). San Diego and Oakland are considering contracts as well (Oakland City Auditor, 2014; San Diego Office of the Independent Budget Analyst 2014).

In Los Angeles, the Board of Public Works and the Unified School District have successfully partnered with building trades unions to train volunteers to help enforce prevailing wage laws. The city inspectors determine violations and assess penalties, but the partnership brings cases to their attention and strengthens them. These volunteers gather information that city inspectors use to put together cases. In addition to expanding the capacity of the city to enforce prevailing wage—essentially acting as the "directed enforcement team"—these volunteers also provide deep industry knowledge and expanded language capabilities (Fine and Gordon 2010).

VI. Towards a Model of City-State Enforcement Partnerships

To date, 12 municipalities in California have instituted their own minimum wage laws and at least seven more are poised to do so, raising the important question of how to coordinate public enforcement at multiple jurisdictional levels. The best models feature collaborative partnerships between city and state wage enforcement agencies.

As described above, California's state enforcement agency currently does not have the legal authority to cite employers for violations of local minimum wage laws. But even when the state receives this authority in January 2016, understaffed state enforcement offices struggle to provide robust investigations and timely collections (Government Accountability Office 2009, Su 2013, Bobo 2009, Cho, Koonse and Mischel 2013). Enforcement resources in California have not kept pace with increases in the number of employers and the complexity of the employment relationship over time (Little Hoover Commission 2015). The Labor Commissioner has fewer than 60 field investigators to conduct more than 6,000 inspections annually, and processes more than 30,000 new wage claims, seeking over $100,000,000 in unpaid wages, every year (Su 20135). Partnerships with city enforcement agencies would allow the state Bureau of Field Enforcement to select strategic industries for proactive enforcement to deter wage theft. Moreover, city and state partnerships have a track record of success. For example, it was a joint investigation by San Francisco's OLSE and the state's BOFE that produced the record $4.25 million settlement for 280 Yank Sing restaurant workers mentioned above.

Partnerships between state and local minimum wage enforcement agencies should maximize resources through a division of labor that avoids duplication of effort. Agencies at both levels should implement a referral system that helps ensure the claimant recovers the full value of what she is owed. For example, where strong local enforcement offices exist, the state should refer workers who file for local minimum wage and overtime violations to those offices. Conversely, local wage enforcement offices may wish to prioritize minimum wage enforcement and refer other complaints to the state (e.g., for meal and rest break violations, failure to receive a final paycheck, or unlawful deductions).

Cities should also be sure to leverage new anti-retaliation protections available under state law, particularly those that protect immigrant workers from being singled out due to their immigration status. They may do so by enforcing provisions where authorized by the new state anti-retaliation laws (e.g., revoking business licenses), and by referring to the state Labor Commissioner's anti-retaliation unit where only that agency is authorized to remedy the violation, such as disciplining or disbarring attorneys who threaten immigrant workers. Finally, the state should direct additional resources to help enforce local minimum wage laws in cities and counties that either do not have local agencies or where local agencies are overwhelmed.

In addition to a clear division of labor, joint projects between state and local enforcement offices can significantly improve the effectiveness of enforcement at all levels. Examples of joint projects include:

1. *Tracking violators and identifying high-risk industries:* Agencies at all levels should maintain and make available enforcement data to identify repeat violators and high-risk industries (Ichikawa and Smith 2014, San Francisco Wage Theft Task Force 2013). This database should be updated by all relevant departments and selection of targets should be coordinated between agencies.

2. *Proactive investigations:* To achieve scale and maximize resources, directed investigations should target

high-risk industries and repeat violators. Cross-agency partnering to conduct targeted investigations can change employer behavior in a lasting and systematic manner.

3. *Cross-agency wage theft working group:* City and state agencies can improve communication and accountability by establishing a permanent wage theft working group that includes members from relevant departments and offices, such as public health, district attorneys, offices of small business, offices of the treasurer and tax collector, and police departments. Community organizations should also be included in this working group (San Francisco Wage Theft Task Force, 2013). This group should meet on a regular basis to share information and strategize on wage enforcement.

4. *Investigator training:* As more and more cities develop local wage enforcement offices, the state should play a central role in training new local enforcement staff. The state has considerable expertise in investigations and auditing, and has already created dozens of training modules. Similarly, over time, city investigators can share with state investigators the experience and knowledge they have gained about best strategies that work in their particular industry mix.

VII. Conclusion

City minimum wage laws are an important innovation in California's labor standards policy. But fully realizing the economic benefits of those laws will require a robust system of coordinated city-state enforcement. In this report, we have outlined the key legal tools and enforcement strategies that will be required, and highlighted the important role of community-based organizations. Useful lessons are emerging from the successful San Francisco model of minimum wage enforcement and other efforts across the country. Nevertheless, many questions remain. How can smaller cities with limited resources best engage in enforcement of their laws? How can cities work with their state's enforcement agencies to develop the most efficient and effective partnerships? As California leads the country into this new public policy terrain, there will be significant opportunity for its cities to learn from one another and work with state representatives to develop best practices.

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Appendix A: Wage Enforcement in California

Workers whose wages are stolen can do one of two things: file a complaint with a government agency, or find a lawyer to sue their employer in court.

Enforcement Agencies

In cities without their own wage enforcement agency, workers who choose to file a complaint with a government agency may file with the federal Department of Labor's Wage and Hour Division or the office of the California Labor Commissioner, also called the Division of Labor Standards Enforcement (DLSE). Because California minimum wage laws are stronger than federal laws, most workers choose to file with the Labor Commissioner.

The Labor Commissioner

The Labor Commissioner's office is a part of the California Department of Industrial Relations; it is the state agency that investigates and adjudicates complaints for violations of basic wage laws, such as minimum wage, overtime, and meal and rest breaks. Workers can take their complaints to any and all of the Labor Commissioner's units simultaneously; workers who prevail at one unit will collect proportionately less money if they likewise prevail for the same violation in another.

The Wage Claim Adjudication Unit decides individual complaints for unpaid wages and other labor law violations. Between 30,000 and 40,000 workers per year choose this route. When a worker files with this unit, she must prove her claim. Neither side is required to have an attorney, nor can attorneys' fees be recovered. Parties are notified of a settlement conference, where a deputy labor commissioner dismisses invalid claims and attempts to help the parties settle the dispute for valid claims. Cases that do not settle proceed to a hearing, where each side receives an opportunity to argue its case under relaxed rules of evidence. Parties may issue subpoenas in advance to gather evidence, but neither side may submit evidence or arguments prior to the hearing. A hearing officer hears the case and makes a decision called an "Order, Decision, or Award" (ODA). If the decision is in the worker's favor, the employer has 10 days to pay or appeal. If the employer does neither, the ODA becomes a final judgment enforceable in court. The worker must enforce that judgment herself through legal remedies called liens and levies, which allow the worker to force the sale of, or seize, a debtor's assets.

The Bureau of Field Enforcement (BOFE) investigates complaints against employers for violations of minimum wage, overtime, or meal and rest periods. It also enforces laws regarding workers' compensation, child labor, recordkeeping, and licensing or registration. Unlike the Wage Claim Adjudication Unit, workers do not have to prove their cases when they file a complaint with BOFE. Instead, the unit investigates on behalf of all affected workers, and issues and enforces citations for violations it discovers. It distributes any unpaid wages it collects to all affected workers, and keeps the administrative penalties and fines to recuperate or offset the costs of investigation. The Retaliation Complaint Investigation Unit investigates complaints of retaliation prohibited under state law, and issues and enforces citations against violators.

The Labor Commissioner has special units for garment and construction workers. The Public Works Unit investigates and enforces prevailing wage laws[11] for public works construction projects. The Garment Worker Unit helps garment workers access additional rights and protections enforced by the Labor Commissioner under AB 633, the "Garment Worker Protection Act."

[11] "Prevailing wages," required for workers on certain public construction projects, are construction wage rates that are higher than minimum wage.

Local Wage Enforcement Offices

Workers in the 12 municipalities in California with higher minimum wages may file complaints of unpaid wages and retaliation with the city agency designated to receive, investigate, and decide those complaints. These agencies function much like the Labor Commissioner's BOFE, because they investigate on behalf of the complainant, issue citations for violations experienced by all of the employer's employees, and collect the money owed under these citations to distribute to all affected workers. Like BOFE, these agencies may retain any penalties or fines they assess in order to recuperate or offset the costs of investigation.

Filing a Lawsuit

State and local wage laws in California create a "private right of action" enabling aggrieved workers to sue their employers directly for unpaid wages as well as liquidated damages. Liquidated damages are statutorily-mandated sums of money awarded to workers in addition to the underlying wages owed. Workers who are owed less than $10,000 may file a lawsuit in the Small Claims court of the Superior Court where they live. Neither side is permitted an attorney in small claims court, so workers must draft their own complaints, serve the complaint to the employers themselves, prepare their own witnesses, and examine and cross-examine witnesses without help. Workers owed sums greater than $10,000, who experience retaliation, or who want to join a class of similarly-situated workers to file a "class action" may file a lawsuit in federal or state Superior Court where they live or work. Most local and state wage laws try to encourage workers to file meritorious claims without fear of incurring the legal debt of their employers through one-way "fee-shifting" provisions. These allow a worker whose case prevails to recover attorneys' fees and costs, but do not require payment of the employer's legal costs where the lawsuit fails. Workers who receive final judgments must enforce that judgment on their own, without the help of a government agency.

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PARTNERSHIP AGREEMENT

BETWEEN

[LOCAL AGENCY]

AND

THE CALIFORNIA LABOR COMMISSIONER'S OFFICE

This Agreement is made and entered into by and between [LOCAL ENTITY] (hereinafter referred to as "LOCAL ENTITY") and the California Labor Commissioner (hereinafter referred to as "Labor Commissioner"), together collectively referred to as "the agencies" or "the parties."

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by conducting joint investigations and sharing information consistent with applicable law, the parties agree to enter into this partnership.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the State of California. The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, to share training materials, to provide employers and employees with compliance assistance information, to conduct joint investigations and share information as appropriate towards the goal of protecting the wages, safety, and health of California's workforce.

Agency Responsibilities

[Local Agency] is responsible for administering and enforcing local minimum wage [expand on scope of ordinance]

Nothing in this agreement limits the local agency's enforcement of these and other local laws conferred as the part of the Local Agency's police powers.

The California Labor Commissioner's Office is the California executive branch Division charged with enforcing provisions of the California Labor Code and Industrial Welfare Commission Orders to ensure a just day's pay in every workplace in the State and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, the Labor Commissioner puts earned wages into workers' pockets and helps level the playing field for law-abiding employers.

Nothing in this agreement limits the Labor Commissioner's enforcement authority.

Contacts

- The agencies will designate a contact person responsible for coordinating the partnership activities.
- The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the partnership.

Enforcement

Where appropriate and to the extent allowable under law,

- The agencies may conduct joint investigations periodically in the State of California, if opportunity provides.
- The agencies may coordinate their respective enforcement activities and assist each other with enforcement.
- The agencies may make referrals of potential violations of each other's statutes.

Effect of Agreement

- This agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligation.

- By entering into this partnership, the agencies do not imply an endorsement or promotion by either party of the policies, programs, or services of the other.

- Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions.

- This agreement contains all the terms and conditions agreed upon by the parties. Upon execution of this agreement, no other understandings regarding the subject matter of this agreement, oral or otherwise, shall be deemed to exist. This agreement is not intended to confer any right upon any private person or other third party.

- Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations. This agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

- This agreement will be executed in full compliance with the California Public Records Act, the California Information Practices Act and any other applicable federal and California state laws.

Exchange of Information

- It is the policy of the Labor Commissioner to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with the Labor Commissioner's own statutory obligations and enforcement efforts. It is the Labor Commissioner's view that an exchange of information in cases in which both entities are proceeding on basically the same matter is to our mutual benefit. There is a need for the Labor Commissioner to provide information to other law enforcement bodies without making a public disclosure.

- Exchange of such information pursuant to this agreement is not a public disclosure under the Public Records Act.
- Confidential Information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. *See, e.g.,* 18 U.S.C. 1905 (Trade Secrets Act) and 5 U.S.C. 552a (Privacy Act of 1974). Examples of Confidential Information that may be shared under this agreement includes, but is not limited to: the identities or statements of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any information identifying specific individuals in statements from employees that were obtained under these conditions; internal opinions and recommendations of local or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and the attorney-work-product privilege; information that identifies or describes a specific individual; individually identifiable health information; and confidential business information and trade secrets.
- Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603 .2(b), means any unemployment compensation information, as defined in 20 CFR 603.20), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
- When Confidential Information is exchanged it shall be accessed and used by the recipient party solely for the limited purposes of carrying out specific activities pursuant to this agreement as described herein, and in no event shall such information be disclosed by the recipient party without the written authority of the other party or a court order.
- In addition to the requirements above, Confidential Unemployment Compensation Information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4, the California Unemployment Insurance Code (e.g., Sections 322, 1094, and 1095) and related regulations, and any other applicable laws.
- In addition to the requirements above, Confidential Information shared under this agreement may be exchanged only subject to (a) the applicable provisions of California law, including but not limited to, the Information Practices Act (Civil Code Section 1798 et seq.), the Evidence Code (e.g., Sections 950 and 1040), the Labor Code (e.g., Sections 6209, 6314 and 6322), and the Unemployment Insurance Code (e.g., Sections 322, 1094, and 1095) and (b) the terms and conditions of any confidentiality agreements that may exist under which Confidential Information has been obtained by the Labor Commissioner.
- The exchange of Confidential Information and Confidential Unemployment Compensation Information under this agreement is purely voluntary, and no obligation to exchange such information is created by this agreement.
- The agencies agree that any documents and information obtained through investigatory subpoenas, interrogatories, and depositions under California Government Code sections 11181 et seq, must be kept confidential. In the event that there is a public proceeding such as a hearing or a trial, in which Confidential Information provided to the Labor Commissioner by the local agency or to the local agency by the Labor Commissioner, such confidential information may be used or testimony of agencies employees sought, the agencies require that they notify each other. In addition such information can be provided to the Attorney General, or other law enforcement agency that agrees to maintain the confidentiality of the documentation. If confidential information is provided to the Attorney General or other law enforcement agency, the disclosing agency must notify the agency that originally obtained the confidential information.

- Subject to the foregoing constraints:
- The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
- The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
- The agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographic areas, if possible.

Outreach and Education

- When appropriate and feasible, the agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications of common concern for the regulated community.
- The agencies agree to provide a hyperlink on each agency's website linking users directly to the outreach materials in areas of mutual jurisdiction and concern.
- The agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
- All materials bearing the agencies name, logo, or seal must be approved in advance by the agency.

Resolution of Disagreements

Disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each agency.

Period of Agreement

This agreement becomes effective upon the signing of both parties, and will expire 3 years from the effective date. This agreement may be modified or added to in writing by mutual consent of both agencies. The agreement may be cancelled by either party by giving thirty (30) days advance written notice prior to the date of cancellation. Renewal of the agreement may be accomplished by written agreement of the parties.

This agreement is effective as of the ____ day of _____, 2016.

Local Agency

By: _____

California Labor Commissioner's Office

By: _____

Print

San Francisco Administrative Code

CHAPTER 12R: MINIMUM WAGE

SEC. 12R.1. TITLE.

This Chapter shall be known as the "Minimum Wage Ordinance."

(Added by Proposition L, 11/4/2003)

SEC. 12R.2. AUTHORITY.

This Chapter is adopted pursuant to the powers vested in the City and County of San Francisco ("the City") under the laws and Constitution of the State of California and the City Charter including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law.

(Added by Proposition L, 11/4/2003)

SEC. 12R.3. DEFINITIONS.

As used in this Chapter, the following capitalized terms shall have the following meanings:

"Agency" shall mean the Office of Labor Standards Enforcement or its successor agency.

"City" shall mean the City and County of San Francisco.

"Employee" shall mean any person who:

(a) In a particular week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and

(b) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

"Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly or through an agent any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. "Employer" shall include the City and the San Francisco In-Home Supportive Services Public Authority.

"Government Supported Employee" shall mean any Employee who is: (1) under the age of 18 and is employed as an after-school or summer Employee in a bona fide training or apprenticeship program in a position that is subsidized by the federal, state, or local government; or (2) over the age 55 and is employed by a Non-Profit Corporation that provides social welfare services as a core mission to individuals who are over the age of 55 and is in a position that is subsidized by federal, state, or local government. The second category shall apply only to Non-Profit Corporations operating as of January 1, 2015, and apply only as to the number of employees over the age of 55 holding positions in the Corporation as of January 1, 2015 that are subsidized by federal, state, or local government, plus 25% of that number. Any employees hired by a Non-Profit Corporation after January 1, 2015 that exceed the numerical threshold in the prior sentence (including the additional 25%) shall not qualify as "Government Supported Employees." If at any time the number of employees over the age of 55 holding positions in the Corporation that are subsidized by federal, state, or local government falls below that numerical threshold (including the additional 25%), then those positions shall qualify as "Government Supported Employee" positions.

"Minimum Wage" shall have the meaning set forth in Section 12R.4 of this Chapter.

"Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in

good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

"Welfare-to-Work Program" shall mean the City's CalWORKS Program, County Adult Assistance Program (CAAP) which includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them.

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.4. MINIMUM WAGE.

(a) Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

(1) Except as provided in subsection 12R.4(b), the Minimum Wage paid to Employees shall be as follows:

(A) Beginning on May 1, 2015, the Minimum Wage shall be an hourly rate of $12.25.

(B) Beginning on July 1, 2016, the Minimum Wage shall be an hourly rate of $13.00.

(C) Beginning on July 1, 2017, the Minimum Wage shall be an hourly rate of $14.00.

(D) Beginning on July 1, 2018, the Minimum Wage shall be an hourly rate of $15.00.

(E) Beginning on July 1, 2019, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as determined by the Controller.

(b) Beginning on May 1, 2015, the Minimum Wage paid to Government Supported Employees shall be an hourly rate of $12.25. Beginning on July 1, 2016, and each year thereafter, the Minimum Wage paid to Government Supported Employees shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as determined by the Controller.

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.5. NOTICE, POSTING AND PAYROLL RECORDS.

(a) By December 1 of each year, the Agency shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the Agency shall by December 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the San Francisco work force, a notice suitable for posting by Employers in the workplace informing Employees of the current Minimum Wage rate and of their rights under this Chapter.

(b) Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice published each year by the Agency informing Employees of t he current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in

English, Spanish, Chinese and any other language spoken by at least five percent of the Employees at the workplace or job site. Every Employer shall also provide each Employee at the time of hire the Employer's name, address and telephone number in writing.

(c) Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the Agency access to such records, with appropriate notice and during business hours, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer paid no more than the applicable federal or state minimum wage, absent clear and convincing evidence otherwise.

(d) The Director of the Agency or his or her designee shall have access to all places of labor subject to this ordinance during business hours to inspect books and records, interview employees and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this ordinance.

(e) The Agency shall be authorized under Section 12R.7 to develop guidelines or rules to govern Agency investigative activities, including but not limited to legal action to be taken in the event of employer noncompliance or interference with Agency investigative actions.

(Added by Proposition L, 11/4/2003; amended by Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.6. RETALIATION PROHIBITED.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(Added by Proposition L, 11/4/2003)

SEC. 12R.7. IMPLEMENTATION AND ENFORCEMENT.

(a) **Enforcement Priority.** It is the policy of the City and County of San Francisco that all employees be compensated fairly according to the law and that Employers who engage in wage theft be held accountable. Towards that end, the Mayor and Board of Supervisors shall study and review the feasibility of enacting additional measures consistent with state law to enhance the Agency's enforcement tools and the City's efforts to combat wage theft. The Mayor and Board of Supervisors shall also take steps to ensure optimal collaboration among all City agencies and departments, as well as between the City and state and federal labor standards agencies, in the enforcement of this Chapter.

(b) **Implementation.** The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes consistent with this Chapter. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and

responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter. The Agency shall make every effort to resolve complaints in a timely manner and shall have a policy that the Agency shall take no more than one year to settle, request an administrative hearing under Section 12R.7(b), or initiate a civil action under Section 12R.7(c). The failure of the Agency to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.

(c) **Administrative Enforcement.**

(1) The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an Employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

(2) Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12R.7(c) of this Chapter and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied. All City agencies and departments shall cooperate with revocation or suspension requests from the Agency. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than $50 for each day and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and shall be used to offset the costs of implementing and enforcing this Chapter. The amounts of all sums and payments authorized or required under this Chapter shall be updated annually for inflation, beginning January 1, 2005, using the inflation rate and procedures set forth in Section 4(b) 12R.4[1] of this Chapter.

(3) An Employee or other person may report to the Agency in writing any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes. In order to further encourage reporting by Employees, if the Agency notifies an Employer that the Agency is investigating a complaint, the Agency shall require the Employer to post or otherwise notify its Employees that the Agency is conducting an investigation, using a form provided by the Agency.

(d) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as penalties in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.

(e) **Interest.** In any administrative or civil action brought for the nonpayment of wages under this Section, the Agency or court, as the case may be, shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

(f) **Posting Notice of Violation.** If an Employer fails to comply with a settlement agreement with the Agency, a final determination by the Agency after an administrative hearing officer issues a decision after a hearing under Section 12R.7(b), an administrative citation issues under Section 12R.19, a decision made in an administrative appeal brought under Section 12R.21, or judgment issued by the Superior Court, and the Employer has not filed an appeal from the administrative hearing decision, administrative citation, administrative appeal decision, or judgment, or the appeal is final, the Agency may require the Employer to post public notice of the Employer's failure to comply in a form determined by the Agency.

(g) **City Employees.** Where the aggrieved party is an Employee of the City, the Employee shall be entitled to all rights and remedies available under this Section 12R.7 except the Employee may not recover the $50 per diem penalty provided for in subsections (b) and (c) of this Section 12R.7.

(Added by Proposition L, 11/4/2003; amended by Ord. 205-06, File No. 060247, App. 7/25/2006; Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011; Proposition J, 11/4/2014)

CODIFICATION NOTES

1. So in Proposition J.

SEC. 12R.8. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

(Added by Proposition L, 11/4/2003)

SEC. 12R.9. RELATIONSHIP TO OTHER REQUIREMENTS.

This Chapter provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections including, but not limited to, the San Francisco Minimum Compensation Ordinance.

(Added by Proposition L, 11/4/2003)

SEC. 12R.10. APPLICATION OF MINIMUM WAGE TO WELFARE-TO-WORK PROGRAMS.

The Minimum Wage established pursuant to Section 12R.4 of this Chapter shall apply to the City's Welfare-to-Work Programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Minimum Wage. Where state or federal law would preclude the City from reducing the number of work hours required under a given Welfare-to-Work Program, the City may comply with this Section by increasing the cash benefits awarded so that their value is no less than the product of the Minimum Wage multiplied by the number of work hours required.

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.11. OPERATIVE DATE.

The changes to this Chapter adopted at the November 4, 2014 municipal election shall have prospective effect only and shall become operative on May 1, 2015.

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.12. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

(Added by Proposition L, 11/4/2003)

SEC. 12R.13. AMENDMENT BY THE BOARD OF SUPERVISORS.

This Chapter may be amended by the Board of Supervisors as regards the implementation or enforcement thereof, but not as regards the substantive requirements of the Chapter or its scope of coverage.

(Added by Proposition L, 11/4/2003)

SEC. 12R.14. CIVIL ACTIONS.

In addition to the actions provided for in Section 12R.7(c), the City Attorney may bring a civil action to enjoin any violation of this Chapter. The City shall be entitled to its attorney's fees and costs in any action brought pursuant to this Section where the City is the prevailing party.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.15. REMEDIES CUMULATIVE.

The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.16. ADMINISTRATIVE PENALTIES AND CITATIONS.

(a) **Administrative Penalties; Citations.** An administrative penalty may be assessed for a violation of the provisions of this Chapter as specified below. The penalty may be assessed by means of an administrative citation issued by the Director of the Office of Labor Standards Enforcement.

(b) **Administrative Penalty Amounts.** In addition to all other civil penalties provided for by law, the following violations shall be subject to administrative penalties in the amounts set forth below:

VIOLATION	PENALTY AMOUNT
Failure to maintain payroll records or to retain payroll records for four years – Administrative Code Section 12R.5(c)	$500.00
Failure to allow the Office of Labor Standards Enforcement to inspect payroll records – Administrative Code Section 12R.5(c)	$500.00
Retaliation for exercising rights under Minimum Wage Ordinance – Administrative Code Section 12R.6 The Penalty for retaliation is $1,000.00 per employee.	$1,000.00
Failure to Post notice of Minimum Wage rate – Administrative Code Section 12R.5(b) Failure to provide notice of investigation to employees – Administrative Code Section 12R.7(b) Failure to post notice of violation to public – Administrative Code Section 12R.7(e) Failure to provide employer's name, address, and telephone number in writing – Administrative Code Section 12R.5(b)	$500.00

The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same employer or person within a three (3) year period. The maximum penalty amount that may be imposed by administrative citation in a calendar year for each type of violation listed above shall be $5,000 or $10,000 if a citation for retaliation is issued. In addition to the penalty amounts listed above, the Office of Labor Standards Enforcement may assess enforcement

costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward the $5,000 annual maximum.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.17. VIOLATIONS.

(a) **Separate and Continuing Violations; Penalties Paid Do Not Cure Violations.** Each and every day that a violation exists constitutes a separate and distinct offense. Each section violated constitutes a separate violation for any day at issue. If the person or persons responsible for a violation fail to correct the violation within the time period specified on the citation and required under Section 12R.18, the Director of the Office of Labor Standards Enforcement may issue subsequent administrative citations for the uncorrected violation(s) without issuing a new notice as provided in Section 12R.18(b). Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar any further enforcement action by the City. If penalties and costs are the subject of administrative appeal or judicial review, then the accrual of such penalties and costs shall be stayed until the determination of such appeal or review is final.

(b) **Payments to City; Due Date; Late Payment Penalty.** All penalties assessed under Section 12R.16 shall be payable to the City and County of San Francisco. Administrative penalties and costs assessed by means of an administrative citation shall be due within thirty (30) days from the date of the citation. The failure of any person to pay an administrative penalty and costs within that time shall result in the assessment of an additional late fee. The amount of the late fee shall be ten (10) percent of the total amount of the administrative penalty assessed for each month the penalty and any already accrued late payment penalty remains unpaid.

(c) **Collection of Penalties; Special Assessments.** The failure of any person to pay a penalty assessed by administrative citation under Section 12R.16 within the time specified on the citation constitutes a debt to the City. The City may file a civil action, create and impose liens as set forth below, or pursue any other legal remedy to collect such money.

(d) **Liens.** The City may create and impose liens against any property owned or operated by a person who fails to pay a penalty assessed by administrative citation. The procedures provided for in Chapter 10, Article XX of the Administrative Code shall govern the imposition and collection of such liens.

(e) **Payment to City.** The Labor Standards Enforcement Officer has the authority to require that payment of back wages found to be due and owing to employees be paid directly to the City and County of San Francisco for disbursement to the employees. The Controller shall hold the back wages in escrow for workers whom the Labor Standards Enforcement Officer, despite his/her best efforts, including any required public notice, cannot locate; funds so held for three years or more shall be dedicated to the enforcement of the Minimum Wage Ordinance or other laws enforced by the Office of Labor Standards Enforcement.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011; Ord. 75-14 , File No. 140226, App. 5/28/2014, Eff. 6/27/2014; Proposition J, 11/4/2014)

SEC. 12R.18. ADMINISTRATIVE CITATION; NOTICE OF VIOLATION.

(a) **Issuance of Citation.** The Director has the authority to issue an administrative citation for any

violation of this Chapter that is identified in Section 12R.16(b). The administrative citation shall be issued on a form prescribed by the Office of Labor Standards Enforcement.

(b) **Notice and Opportunity to Cure.** In order to facilitate compliance, the Director of the Office of Labor Standards Enforcement ("Director") or his or her designee may notify any person in violation of the Code provisions identified in Section 12R.16(b) of such violation prior to the issuance of an administrative citation. Regardless of the manner of service of the notice under Section 12R.19, the Director or his or her designee may post the notice of violation by affixing the notice to a surface in a conspicuous place on property that is (1) the person's principal place of business in the City, or (2) if the person's principal place of business is outside the City, the fixed location within the City from or at which the person conducts business in the City, or (3) if the person does not regularly conduct business from a fixed location in the City, one of the following: (i) the location where the person maintains payroll records if the notice of violation is for violation of Section 12R.5(c), or (ii) the jobsite or other primary location where the person's employees perform services in the City at the time the notice is posted. The notice of violation shall specify the action required to correct or otherwise remedy the violation(s). At the discretion of the Director or his or her designee, the person or persons responsible for the violation may be allowed ten (10) days from the date of the notice of violation to establish that no violation occurred or such person or persons are not responsible for the violation, or correct or otherwise remedy the violation; provided, however, that the Director may, in his or her discretion, assign a longer period, not to exceed twenty-one (21) days, within which to correct or otherwise remedy each violation, or establish that no violation occurred or such person or persons are not responsible for the violation. The Director may consider the cost of correction and the time needed to obtain information, documents, data and records for correction in assigning a specific period of time within which to correct or otherwise remedy each violation, or obtain and submit evidence that no violation occurred or such person or persons are not responsible for the violation.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.19. ADMINISTRATIVE CITATION AND NOTICE OF VIOLATION; SERVICE.

Service of a notice of violation and an administrative citation under Section 12R.16 may be accomplished as follows:

(a) The Director or his or her designee may obtain the signature of the person responsible for the violation to establish personal service of the citation; or

(b) (1) Director or his or her designee shall post the citation by affixing the citation to a surface in a conspicuous place on the property described in Section 12R.18. Conspicuous posting of the citation is not required when personal service is accomplished or when conspicuous posting poses a hardship, risk to personal health or safety or is excessively expensive; and

(2) The Director or his or her designee shall serve the citation by first class mail as follows:

(i) The administrative citation shall be mailed to the person responsible for the violation by first class mail, postage prepaid, with a declaration of service under penalty of perjury; and

(ii) A declaration of service shall be made by the person mailing the administrative citation showing the date and manner of service by mail and reciting the name and address of the person to whom the citation is issued; and

(iii) Service of the administrative citation by mail in the manner described above shall be effective on the date of mailing.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.20. ADMINISTRATIVE CITATION; CONTENTS.

The administrative citation under Section 12R.16 shall include all the following:

(1) A description of the violation;

(2) The date and location of the violation(s) observed;

(3) A citation to the provisions of law violated;

(4) A description of corrective action required;

(5) A statement explaining that each day of a continuing violation may constitute a new and separate violation;

(6) The amount of administrative penalty imposed for the violation(s);

(7) A statement informing the violator that the fine shall be paid to the City and County of San Francisco within thirty (30) days from the date on the administrative citation, the procedure for payment, and the consequences of failure to pay;

(8) A description of the process for appealing the citation, including the deadline for filing such an appeal; and

(9) The name and signature of the Director.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.21. ADMINISTRATIVE APPEAL.

(a) **Period of Limitation for Appeal.** Persons receiving an administrative citation may appeal it within fifteen (15) days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with both the Office of Labor Standards Enforcement and the Controller's Office as indicated in the administrative citation.

(b) **Hearing Date.** As soon as practicable after receiving the written notice of appeal and the penalty amount, the Controller or his or her designee shall promptly select a hearing officer (who shall not be an employed in the Office of Labor Standards Enforcement) to hear and decide the administrative appeal. The hearing officer shall fix a date, time and place for the hearing on the appeal. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the notice must be made at least ten (10) days prior to the date of the hearing to the person appealing the citation. The hearing shall be held no later than thirty (30) days after service of the notice of hearing, unless that time is extended by mutual agreement of the parties.

(c) **Notice.** Except as otherwise provided by law, the failure of any person with an interest in property affected by the administrative citation, or other person responsible for a violation, to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this Chapter.

Service by first class mail, postage prepaid, shall be effective on the date of mailing.

(d) **Failure to Appeal.** Failure of any person to file an appeal in accordance with the provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative remedies and a forfeiture of the penalty amount previously remitted.

(e) **Submittals for the Hearing.** No later than five (5) days prior to the hearing, the person to whom the citation was issued and the Office of Labor Standards Enforcement shall submit to the hearing officer, with simultaneous service on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

(f) **Conduct of Hearing.** The hearing officer appointed by the Controller or the Controller's designee shall conduct all appeal hearings under this Chapter. The Office of Labor Standards Enforcement shall have the burden of proof in such hearings. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their serious business affairs, including but not limited to the following:

(1) A valid citation shall be prima facie evidence of the violation;

(2) The hearing officer may accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

(3) The person responsible for the violation, or any other interested person, may present testimony or evidence concerning the violation and the means and time frame for correction.

The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Office of Labor Standards Enforcement or the appellant prior to issuing a written decision.

(g) **Hearing Officer's Decision; Findings.** The hearing officer shall make findings based an the record of the hearing and issue a decision based on such findings within fifteen (15) days of conclusion of the hearing. The hearing officer's decision may uphold the issuance of a citation and penalties stated therein, may dismiss a citation, or may uphold the issuance of the citation but reduce, waive or conditionally reduce or waive the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing of officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding civil penalties. Copies of the findings and decision shall be served upon the appellant and the Office of Labor Standards Enforcement by certified mail.

(h) **Hearing Officer's Decision.** The decision of the hearing officer is final. If the hearing officer concludes that the violation charged in the citation did not occur or that the person charged in the citation was not the responsible party, the Office of Labor Standards Enforcement shall refund or cause to be refunded the penalty amount to the person who deposited such amount. The hearing officer's decision shall be served on the appellant by certified mail.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.22. REGULATIONS.

The Office of Labor Standards Enforcement may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the administrative penalty and citation system pursuant to Sections 12R.16 through 12R.20, inclusive. The Controller may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the conduct of administrative appeals under Section 12R.21. Any rules and regulations promulgated by the Office of Labor Standards Enforcement or Controller shall be approved as to legal form by the City Attorney, and shall be subject to not less than one noticed public hearing. The rules and regulations shall become effective 30 days after receipt by the Clerk of the Board of Supervisors, unless the Board of Supervisors by resolution disapproves or modifies the regulations. The Board of Supervisors' determination to modify or disapprove a rule or regulation submitted by the Office of Labor Standards Enforcement or Controller shall not impair the ability of the Office of Labor Standards Enforcement or Controller to resubmit the same or similar rule or regulation directly to the Board of Supervisors if the Office of Labor Standards Enforcement or Controller determines it is necessary to effectuate the purposes of this Chapter.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.23. JUDICIAL REVIEW.

(a) **Procedures.** After receipt of the decision of the hearing officer under Section 12R.21, the appellant may file an appeal with the superior court pursuant to California Government Code Section 53069.4. The appeal shall be submitted within twenty (20) days of the date of mailing of the hearing officer's decision, with the applicable filing fee. The appeal shall state the reasons the appellant objects to the findings or decision.

(b) **Review.** The superior court shall conduct a de novo hearing, except that the contents of the Office of Labor Standards Enforcement's file (excluding attorney client communications and other privileged or confidential documents and materials that are not discoverable or may be excluded from evidence in judicial proceedings under the Evidence Code, Civil Code, Code of Civil Procedure or other applicable law) shall be received into evidence. A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.

(c) **Filing Fee.** The superior court filing fee shall be twenty-five ($25.00). If the court finds in favor of the appellant, the amount of the fee shall be reimbursed to the appellant by the City and County of San Francisco. Any deposit of penalty shall be refunded by the City and County of San Francisco in accordance with the judgment of the court.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.24. OTHER REMEDIES NOT AFFECTED.

The administrative citation procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law which may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.25. OUTREACH.

The Office of Labor Standards Enforcement shall establish a community-based outreach program to conduct education and outreach to employees. In partnership with organizations involved in the community-based outreach program, the Office of Labor Standards shall create outreach materials that are designed for workers in particular industries.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.26. REPORTS.

The Office of Labor Standards Enforcement shall provide annual reports to the Board of Supervisors on the implementation of the Minimum Wage Ordinance.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

Print

San Francisco Administrative Code

CHAPTER 12W: SICK LEAVE *

SEC. 12W.1. TITLE.

This Chapter shall be known as the "Sick Leave Ordinance."

(Added by Proposition F, 11/7/2006)

SEC. 12W.2. DEFINITIONS.

For purposes of this Chapter, the following definitions apply.

(a) "Agency" shall mean the Office of Labor Standards Enforcement or any department or office that by ordinance or resolution is designated the successor to the Office of Labor Standards Enforcement.

(b) "City" shall mean the City and County of San Francisco.

(c) "Employee" shall mean any person who is employed within the geographic boundaries of the City by an employer, including part-time and temporary employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and any applicable

U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance Program (CAAP), and any successor programs that are substantially similar to them, that require a public assistance applicant or recipient to work in exchange for their grant.

(d) "Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

(e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition extends beyond the employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an employee for the purpose of providing care or assistance to other persons, as specified further in Section 12W.4(a), with an illness, injury, medical condition, need for medical diagnosis or treatment, or other medical reason.

(f) "Small business" shall mean an employer for which fewer than ten persons work for compensation during a given week. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

(Added by Proposition F, 11/7/2006)

SEC. 12W.3. ACCRUAL OF PAID SICK LEAVE.

(a) For employees working for an employer on or before the operative date of this Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For employees hired by an employer after the operative date of this Chapter, paid sick leave shall begin to accrue 90 days after the commencement of employment with the employer.

(b) For every 30 hours worked after paid sick leave begins to accrue for an employee, the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

(c) For employees of small businesses, there shall be a cap of 40 hours of accrued paid sick leave. For employees of other employers, there shall be a cap of 72 hours of accrued paid sick leave. Accrued paid sick leave for employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned caps.

(d) If an employer has a paid leave policy, such as a paid time off policy, that makes available to employees an amount of paid leave that may be used for the same purposes as paid sick leave under this Chapter and that is sufficient to meet the requirements for accrued paid sick leave as stated in subsections (a)-(c), the employer is not required to provide additional paid sick leave.

(e) An employer is not required to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment, for accrued paid sick leave that the employee has not used.

(Added by Proposition F, 11/7/2006)

SEC. 12W.4. USE OF PAID SICK LEAVE.

(a) An employee may use paid sick leave not only when he or she is ill or injured or for the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code § 233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The employee may use all or any percentage of his or her paid sick leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 12W.3(a). There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.

(b) An employer may not require, as a condition of an employee's taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(c) An employer may require employees to give reasonable notification of an absence from work for which paid sick leave is or will be used.

(d) An employer may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful.

(Added by Proposition F, 11/7/2006)

SEC. 12W.5. NOTICE AND POSTING.

(a) The Agency shall, by the operative date of this Chapter, publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by employers in the workplace informing employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the notice required herein with the notice required by Section 12R.5(a) of the Administrative Code.

(b) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice required by subsection (a). Every employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

(Added by Proposition F, 11/7/2006)

SEC. 12W.6. EMPLOYER RECORDS.

Employers shall retain records documenting hours worked by employees and paid sick leave taken by employees, for a period of four years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to an employee's entitlement to paid sick leave under this Chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick leave taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this Chapter, absent clear and convincing evidence otherwise.

(Added by Proposition F, 11/7/2006)

SEC. 12W.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

It shall be unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to the right to use paid sick leave pursuant to this Chapter; the right to file a complaint or inform any person about any employer's alleged violation of this Chapter; the right to cooperate with the Agency in its investigations of alleged violations of this Chapter; and the right to inform any person of his or her potential rights under this Chapter.

It shall be unlawful for an employer absence control policy to count paid sick leave taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

Protections of this Chapter shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

Taking adverse action against a person within 90 days of the person's filing a complaint with the Agency or a court alleging a violation of any provision of this Chapter; informing any person about an employer's alleged violation of this Chapter; cooperating with the Agency or other persons in the investigation or prosecution of any alleged violation of this Chapter; opposing any policy, practice, or act that is unlawful under this Chapter; or informing any person of his or her rights under this Chapter shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights.

(Added by Proposition F, 11/7/2006)

SEC. 12W.8. IMPLEMENTATION AND ENFORCEMENT.

(a) **Implementation.** The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of

their rights under this Chapter, for monitoring employer compliance with this Chapter, and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter.

(b) **Administrative Enforcement.** The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, and the payment of an additional sum as an administrative penalty to each employee or person whose rights under this Chapter were violated. If any paid sick leave was unlawfully withheld, the dollar amount of paid sick leave withheld from the employee multiplied by three, or $250.00, whichever amount is greater, shall be included in the administrative penalty paid to the employee. In addition, if a violation of this Chapter resulted in other harm to the employee or any other person, such as discharge from employment, or otherwise violated the rights of employees or other persons, such as a failure to post the notice required by Section 12W.5(b), or an act of retaliation prohibited by Section 12W.7, this administrative penalty shall also include $50.00 to each employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12W.8(c) and/or, except where prohibited by State or Federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating employer or person to pay to the City a sum of not more than $50.00 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the agency and used to offset the costs of implementing and enforcing this Chapter.

An employee or other person may report to the agency any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(c) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of $50.00 to each employee or person whose rights under this Chapter were violated for each hour or portion thereof that the violation occurred or continued, plus, where the employer has unlawfully withheld paid sick leave to an employee, the dollar amount of paid sick leave withheld from the employee multiplied by three; or

$250.00, whichever amount is greater; and reinstatement in employment and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable State law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

(d) **Interest.** In any administrative or civil action brought under this Chapter, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(e) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Chapter are cumulative.

(Added by Proposition F, 11/7/2006)

SEC. 12W.9. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter shall not apply to employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

(Added by Proposition F, 11/7/2006)

SEC. 12W.10. OTHER LEGAL REQUIREMENTS.

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick leave, whether paid or unpaid, or that extends other protections to employees.

(Added by Proposition F, 11/7/2006)

SEC. 12W.11. MORE GENEROUS EMPLOYER LEAVE POLICIES.

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter. Employers are encouraged to provide more generous leave policies than required by this Chapter.

(Added by Proposition F, 11/7/2006)

SEC. 12W.12. OPERATIVE DATE.

This Chapter shall become operative 90 days after its adoption by the voters at the November 7, 2006 election. This Chapter shall have prospective effect only.

(Added by Proposition F, 11/7/2006)

SEC. 12W.13. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

(Added by Proposition F, 11/7/2006)

SEC. 12W.14. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right by any member of the public against the City.

(Added by Proposition F, 11/7/2006)

SEC. 12W.15. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

(Added by Proposition F, 11/7/2006)

SEC. 12W.16. AMENDMENT BY THE BOARD OF SUPERVISORS.

The Board of Supervisors may amend this Chapter with respect to matters relating to its implementation and enforcement (including but not limited to those matters addressed in Section 12W.8) and matters relating to employer requirements for verification or documentation of an employee's use of sick leave, but not with respect to this Chapter's substantive requirements or scope of coverage; provided, however, that, in the event any provision in this Chapter is held legally invalid, the Board retains the power to adopt legislation concerning the subject matter that was covered in the invalid provision.

(Added by Proposition F, 11/7/2006)

Notes

* ***Editor's note***

Proposition F, approved November 7, 2006, added provisions designated as a new Ch. 12W, Sick Leave, to read as herein set out. At the request of the city, former Ch. 12W, pertaining to the San Francisco Slavery Disclosure Ordinance, has been renumbered as Ch. 12Y.

Chapter 8.101 - WAGE ENFORCEMENT

Sections:

8.101.010 - Short Title.

The ordinance codified in this Chapter shall be known as the "Los Angeles County Wage Enforcement Ordinance."

(Ord. 2016-0026 § 2, 2016.)

8.101.020 - Findings and Purpose.

The Board of Supervisors finds and declares as follows:

A. Findings. Wage theft occurs when employees are not paid the wages they are owed by their employers. This can occur when workers receive payment at a rate below the legal hourly minimum wage, whether paid by the hour, by the piece, by the week, or by the project. Significant and extensive minimum wage violations have been documented throughout California, as well as within the County of Los Angeles. The Economic Roundtable and the University of California Los Angeles indicate that violations of wage laws in Los Angeles County are pervasive, with 30 percent of low wage workers in Los Angeles County receiving less than the minimum wage and 88.5 percent of workers experiencing some sort of wage theft.

A practice of not fully paying employees also gives unscrupulous employers a competitive business advantage that harms responsible employers. In addition, workers that are not paid the full amount they earn are often forced to resort to government services to provide for their and their families' basic needs, thereby drawing on already limited resources of the County.

On November 17, 2015, the County adopted the Los Angeles County Minimum Wage Ordinance establishing a new minimum wage in the unincorporated areas of the County which becomes effective on July 1, 2016, and increases in various increments thereafter. The Los Angeles County Minimum Wage Ordinance promotes an employment environment that helps protect government resources while promoting the health, safety and welfare of the County's residents.

Therefore, the County has an interest in: (1) enforcing wage violations to promote the health, safety, and welfare of workers, their families, and communities; (2) protecting government resources, by ensuring employees receive the wages they earn, thereby diminishing the need for government assistance; and (3) providing assistance to businesses to help with and encourage compliance.

It is also necessary and important that the County and any department responsible for enforcing wage violations, or any other activities that may be necessary to assist the County in enforcing wage violations, be able to obtain the information needed in order to complete a thorough investigation by legal means, including but not limited to, the subpoena process.

B. Purpose. The purpose of the Los Angeles County Wage Enforcement Ordinance is to: (1) create a wage enforcement program that ensures employees performing work in the unincorporated areas of the County of Los Angeles are paid no less than the amount they are owed according to the Los Angeles County Minimum Wage Ordinance; (2) educate and inform County employers and employees about the requirements, benefits, and protections provided by the County of Los Angeles and its wage enforcement program; (3) refer violations of wage and hour laws that are the responsibility of other enforcement agencies, such as misclassification of independent contractors, to the appropriate authority for investigation; and (4) allow for partnerships between the County and other local, State, and federal agencies responsible for enforcement of wage and hour laws throughout the County to promote a fair employment environment for all employees and businesses.

(Ord. 2016-0026 § 2, 2016.)

8.101.030 - Definitions.

The general definitions contained in Chapter 2.02 shall be applicable to this Chapter unless inconsistent with the following definitions:

A. "Correction Order" means the notice issued by Department of Consumer and Business Affairs to an Employer described in Section 8.101.120 (A).

B. "Days" means calendar days. If the day any action required under this Chapter falls on a weekend or a County holiday, the time for completing the required action shall be extended to the next business day immediately following the weekend or holiday.

C. "DCBA" means the County of Los Angeles Department of Consumer and Business Affairs.

D. "Director" means the Director of the DCBA or his or her designee.

E. "Director's Rules" means those rules promulgated by the DCBA and adopted by the County Board of Supervisors, as described in Section 8.101.090 (D).

F. "Employee" for purposes of this Chapter shall have the same meaning as provided in Los Angeles County Code Section 8.100.030 (C).

G. "Employer" for purposes of this Chapter shall have the same meaning as provided in Los Angeles County Code Section 8.100.030 (D).

H. "Hearing Officer" for purposes of this Chapter shall have the same meaning as provided in Los Angeles County Code Section 1.25.020 (D).

I. "Los Angeles County Minimum Wage" or "Minimum Wage" means the minimum wage as defined in Chapter 8.100 of the Los Angeles County Code.

J. "License" means any license, registration, certificate, or permit issued by the County or a department, agency, or commission of the County of Los Angeles.

K. "Pay Day" means a specific date designated by an Employer on which wages are paid for hours worked during a Pay Period, as defined.

L. "Pay Period" means a defined time frame for which an Employee will receive a paycheck as provided in the California Labor Code.

M. "Reconsideration Determination" means the written response of the Director to a timely request for reconsideration of a Wage Enforcement Order as described in Section 8.101.130 (C).

N. "Service" or "Serve" for purposes of this Chapter means personal delivery or delivery through first class mail, postage pre-paid, to the person to be served. If served via personal service, service shall be effective on the date personal service is executed; if served via first class mail, service shall be effective on the date of mailing. All notices that must be served under this Section must include a proof of service stating the date of service.

O. "Wage Enforcement Order" means the written order issued by DCBA to an Employer as described in Section 8.101.120 (B).

(Ord. 2016-0026 § 2, 2016.)

8.101.040 - Minimum Wage Compensation Requirements.

An Employer shall pay no less than the amount required by the Los Angeles County Minimum Wage Ordinance in Chapter 8.100 to an Employee, on a designated regular Pay Day and at no longer than monthly payment intervals, unless otherwise permitted by law.

(Ord. 2016-0026 § 2, 2016.)

8.101.050 - Notice of the Los Angeles County Minimum Wage.

On or before July 1 of each year, the DCBA shall prepare and provide a notice for posting of the Los Angeles County Minimum Wage and the rights of Employees in order for Employers to comply with Section 8.101.060 (A). The DCBA shall make available electronic and hardcopy versions of such notices.

(Ord. 2016-0026 § 2, 2016.)

8.101.060 - Employee Notification Requirements.

A. Los Angeles County Minimum Wage Workplace Posting. Every Employer shall post in a conspicuous place at any workplace or jobsite located within the unincorporated areas of the County where any Employee works, the notice provided each year by the DCBA pursuant to Section 8.101.050 informing Employees of the current minimum wage rate and of their rights under this Chapter. Employers that do not have a physical jobsite within the unincorporated areas of the County must provide a copy of the DCBA notice each year to each Employee that performs work in the unincorporated areas.

B. Initial Compensation Disclosure Statement. At the time of hire, Employers shall provide each Employee with a written statement disclosing: (1) the Employer's name, any trade ("doing business as") names, the physical and mailing address of the Employer's main office, email address, and the Employer's telephone number; (2) the Employee's rate or rates of pay; (3) the Employer's tip policy, including any tip sharing, pooling, or allocation policies, if applicable; (4) the Employee's pay basis (e.g., hour, shift, day, week, commission); (5) the formula by which the DCBA can determine the Employee's rate of pay and total pay; (6) Employee's established Pay Day for earned wage compensation; (7) each deduction that will be collected from the Employee's pay each Pay Period; and (8) additional information specified in the Director's Rules.

C. Pay Period Statement. Each Pay Day, Employers shall provide each Employee with all information required by section 226(a) of the California Labor Code, as well as the additional information: (1) the rate or rates of pay for the Pay Period; (2) the pay basis (e.g., hour, shift, day, week, commission); (3) gross wages; and (4) any other information required in the Director's Rules adopted pursuant to this Chapter.

D. Supplemental Disclosure Allowed. Nothing in this Section shall require Employers to duplicate disclosures required by State law, including sections 226 and 2810.5 of the California Labor Code. Disclosures required by this Section may be satisfied by supplementing any State-mandated disclosure.

(Ord. 2016-0026 § 2, 2016.)

8.101.070 - Employer Record Keeping and Access Requirements.

A. Payroll Records. Employers shall retain accurate and complete payroll records pertaining to each Employee that document the name, address, occupation, dates of employment, rate or rates of pay, amount paid each Pay Period, the hours worked for each Employee, and the formula by which each Employee's wages are calculated.

B. Retention Period. Every Employer shall retain payroll records required in subsection A, above, pertaining to each Employee for a period of four (4) years.

C. Records and Interview Access; Cooperation with Investigations. To monitor and investigate compliance with the requirements of Chapter 8.100 or this Chapter, every Employer shall: allow the DCBA access to such records required in subsection A, allow the DCBA to interview persons, including Employees, during normal business hours, and shall cooperate with the DCBA investigators.

D. Presumption of Retaliation. There shall be a rebuttable presumption that an Employer violated this Chapter if an allegation is made concerning an Employee's entitlement to compensation due under the Los Angeles County Minimum Wage Ordinance and an Employer does not maintain or retain payroll records required by subsection A, or if an Employer does not allow the DCBA reasonable access to such records.

E. Records Access Charges. Where an Employer demonstrates to the DCBA that the Employer shall incur a

fee or charge for providing the records required in subsection A, the Employer shall only be required to provide the DCBA with the prior two years of records unless the DCBA determines obtaining four years of records is reasonable and necessary for the enforcement of Chapter 8.100 or this Chapter.

(Ord. 2016-0026 § 2, 2016.)

8.101.080 - Retaliation Prohibited.

It shall be unlawful for an Employer or any other person to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under Chapter 8.100 or this Chapter. Rights protected under Chapter 8.100 and this Chapter include, but are not limited to: (1) the right to file a complaint or inform any person about any other person's alleged noncompliance with Chapter 8.100 or this Chapter; and (2) the right to inform any person of his or her potential rights under Chapter 8.100 or this Chapter and to assist in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with Chapter 8.100 or this Chapter. Taking adverse action against a person within 90 days of the person's exercise of rights protected under Chapter 8.100 or this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(Ord. 2016-0026 § 2, 2016.)

8.101.090 - Department of Consumer and Business Affairs—Powers and Duties.

A. Enforcement and Investigations. The DCBA is authorized to take appropriate steps to enforce Chapter 8.100 and this Chapter, including conducting investigations of possible violations by an Employer or other person.

B. Access to Records. The DCBA shall have access to all workplaces subject to this ordinance during business hours to inspect books and records, to interview persons, including Employees, and to investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of Chapter 8.100 or this Chapter.

C. Subpoenas. The DCBA may request the issuance of a subpoena as authorized by law for the examination of any person, or books, papers, records, or other items relevant to the enforcement of Chapter 8.100 or this Chapter.

D. Rulemaking Authority. The Director may develop rules for the administration of this Chapter. Such Director's Rules shall be presented to the Board of Supervisors and become effective if approved by the Board.

E. Confidentiality. The DCBA shall encourage reporting and cooperation with investigations by keeping confidential, to the maximum extent permitted by applicable laws, the name, address, and other identifying information of each Employee, person reporting a violation, or person aiding an investigation by providing information to the DCBA investigators. Provided, however, that with the authorization of such person, the DCBA may disclose his or her name and identifying information as necessary to enforce Chapter 8.100 or this Chapter or for other appropriate purposes. The DCBA shall also protect proprietary business information to the greatest extent allowed by law.

F. Settlement Authority.

1. The DCBA is authorized to negotiate and approve settlements with Employers where the DCBA determines settlement is in the best interest of the County and affected Employees. Settlement agreements must be in writing and signed by the Director and the Employer. Settlements authorized under this subsection may provide Employers with a repayment plan to be paid over time.
2. The DCBA may waive any additional fines owed to the County imposed under this Chapter, in whole or in part, if the violation was not willful and the DCBA determines that enforcement of the additional fines would not further the purposes of this Chapter.
3. The DCBA shall not reduce the amount of back wages an Employer is determined to owe to

Employees without the written consent of the affected Employees. Repayment of back wages to Employees shall include interest at the rate specified in subdivision (b) of section 3289 of the California Civil Code, which shall accrue from the date the wages were due and payable as provided in Part 1 (commencing with section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

G. Contracts with Community Based Organizations. The DCBA shall have the authority to contract, in accordance with County contracting rules and procedures, with Community Based Organizations for them to assist in the education and outreach related to the Los Angeles County Minimum Wage Ordinance and this Chapter.

(Ord. 2016-0026 § 2, 2016.)

8.101.100 - Complaints.

Any person may file a complaint with the DCBA alleging a potential violation of Chapter 8.100 or this Chapter. A complaint should include a statement of the dates, places, and persons or entities responsible for such violation. Complaints must be filed within three (3) years after the occurrence of the alleged violation of Chapter 8.100 or this Chapter.

(Ord. 2016-0026 § 2, 2016.)

8.101.110 - Investigations.

Upon receipt of a complaint that DCBA deems credible, or if the Director has reason to believe that any person may be in violation of Chapter 8.100 or this Chapter, DCBA may conduct an investigation into the potential violation. DCBA may conduct site inspections, interview Employees or other witnesses to alleged violations, take depositions, review document and records, and perform any other investigatory method reasonably necessary to determine whether a violation of Chapter 8.100 or this Chapter occurred. DCBA may issue a Correction Order at any time during the course of an investigation. Upon completion of an investigation, if DCBA determines a violation of Chapter 8.100 or this Chapter was committed, DCBA shall issue a Wage Enforcement Order to the Employer or person responsible for the violation.

(Ord. 2016-0026 § 2, 2016.)

8.101.120 - Notices of Violation.

A. Correction Order. If, during the course of an investigation, the DCBA has determined a violation of Chapter 8.100 or this Chapter has occurred, the DCBA may issue and serve a Correction Order on the Employer immediately. The Correction Order shall identify the violation to be corrected and a reasonable amount of time to correct the violation. Failure to comply with the Correction Order may be included in a subsequent Wage Enforcement Order.

B. Wage Enforcement Order.

1. After completing an investigation, if the DCBA determines an Employer has violated a provision of Chapter 8.100 or this Chapter, including but not limited to a failure to comply with a Correction Order, the DCBA shall prepare and serve a Wage Enforcement Order on the Employer.
2. A Wage Enforcement Order contains the DCBA's final determination concerning whether an Employer violated Chapter 8.100 or this Chapter, the administrative fine for each violation as specified in Section 8.101.150, and that an amount is due and owing to either an Employee, the County, or both. A Wage Enforcement Order shall include information as required in a notice of violation pursuant to Los Angeles County Code Section 1.25.050 (C), and may also contain the following:
    a. A description of any corrective action required, including reinstatement of any Employee, if applicable;
    b. A statement explaining that each day of a continuing violation may constitute a new and separate

violation;

c. The amount of wages due and the amount of interest, penalties, and administrative fines imposed for the violation(s);

d. A statement informing the Employer that the administrative fines shall be paid to the County of Los Angeles, the date by which the DCBA requires the administrative fines to be paid, the procedure for payment, and the consequences of failure to pay; and

e. The name and signature of the Director.

C. The Employer must, within 24 hours after receipt of a Wage Enforcement Order, post the Wage Enforcement Order by affixing the Wage Enforcement Order or an exact copy in a conspicuous place at any workplace or jobsite located within the unincorporated areas of the County where any Employee works, or for Employers that do not have a physical jobsite within the unincorporated areas of the County, must provide an exact copy of the Wage Enforcement Order to all Employees that perform work in the unincorporated areas.

D. Stay of Enforcement. At the DCBA's discretion, a stay of any corrective action required by a Wage Enforcement Order may be issued in the event of good faith settlement negotiations.

(Ord. 2016-0026 § 2, 2016.)

8.101.130 - Reconsideration of Wage Enforcement Order.

A. Reconsideration by Director. An Employer, Employee, or any interested party, that is the subject of a Wage Enforcement Order, may file a written request for reconsideration of a Wage Enforcement Order with the DCBA. A request for reconsideration of a Wage Enforcement Order by an Employer shall be filed with the DCBA within 20 days from the date the Wage Enforcement Order is served, unless extended by the Director upon a showing of good cause. A request for reconsideration by an Employee shall be filed with the DCBA within 20 days of posting of the Wage Enforcement Order by the Employer pursuant to Section 8.101.120 (C). In order to be considered timely, the request for reconsideration must be postmarked or actually received by the DCBA on or before the 20th day following the service of the Wage Enforcement Order on the Employer. The request for reconsideration shall be in writing and filed with the DCBA and include the following information:

1. The alleged violation(s) being contested;
2. The reason, in detail, why each violation being contested should be reconsidered;
3. Any new facts or law not considered in the course of the DCBA's investigation that would aid in issuing a final determination;
4. The signature of the person or entity requesting reconsideration, under penalty of perjury; and
5. The return address where the person or entity requesting reconsideration shall receive service of a Reconsideration Determination.

B. Stay of Enforcement. If administrative fines owed to the County are the subject of the request for reconsideration, then accrual of such administrative fines shall be stayed upon receipt of the request for reconsideration, until the determination of such reconsideration is final. The payment of the contested amount of wages and fines owed to Employees during the pendency of any request for reconsideration shall be stayed but shall continue to accrue until a determination of such appeal or review is final.

C. Reconsideration Determination. Within 20 days of receipt of the written request for reconsideration, the Director shall respond to a request for reconsideration by issuing a written Reconsideration Determination. The Director may uphold or reject the Wage Enforcement Order, in whole or in part, or reduce, waive, or conditionally reduce the administrative fines stated in a Wage Enforcement Order if mitigating circumstances are shown. The Director may impose conditions and deadlines for the correction of violations or the payment of outstanding wages, penalties and administrative fines, and may include

instructions for notifying Employees of the Reconsideration Determination. The Reconsideration Determination shall be served by mail to the Employer, Employee, and any other persons requesting notice. A Reconsideration Determination shall be final unless timely appealed pursuant to Section 8.101.140.

(Ord. 2016-0026 § 2, 2016.)

8.101.140 - Appeals.

A. Administrative Appeal. After receiving a Reconsideration Determination from the DCBA, any person may file an administrative appeal of the Reconsideration Determination before a Hearing Officer appointed pursuant to Chapter 1.25. No person may file an administrative appeal unless such person has first filed a request for reconsideration and received a Reconsideration Determination from the Director.

B. Judicial Review of Hearing Officer Decision. Pursuant to Chapter 1.25, any person may seek judicial review of a Hearing Officer's decision pertaining to the imposition of an administrative fine by filing an appeal with the Superior Court in accordance with the time periods, procedures, and other requirements set forth in section 53069.4 of the California Government Code. If no appeal of the Hearing Officer's written decision is filed within the time period set forth in section 53069.4 of the California Government Code, the Hearing Officer's decision shall be deemed confirmed and final.

(Ord. 2016-0026 § 2, 2016.)

8.101.150 - Administrative Fines for Violations.

A. Administrative Fines. An administrative fine payable to the County or Employee may be assessed for a violation of any provision of this Chapter as specified below. The administrative fine may be assessed through a Wage Enforcement Order issued to the Employer by the DCBA.

VIOLATION AND FINE AMOUNT			
Violation	County Code Section	Fine Per Violation Payable to the County	Fine Per Violation Payable to the Employee
Failure to post or provide notice of the Los Angeles County Minimum Wage rate	Los Angeles County Code Section 8.101.060	Up to $500	
Failure to provide complete, accurate, and timely Initial Compensation Disclosure Statement or Pay Period Statement	Los Angeles County Code Section 8.101.060	Up to $500 per employee	Up to $500 per violation

Failure to allow access for inspection of books and records or to interview Employees	Los Angeles County Code Section 8.101.070	Up to $500	
Failure to maintain payroll records or to retain payroll records for four years	Los Angeles County Code Section 8.101.070	Up to $500	
Failure to cooperate with the DCBA's investigation	Los Angeles County Code Section 8.101.070	Up to $500	
Retaliation for exercising rights under Chapter 8.100 or this Chapter	Los Angeles County Code Section 8.101.080	Up to $1,000 per employee subject to retaliation	Up to $1,000 per employee. Plus $100 per day until reinstatement, if ordered
Failure to post Wage Enforcement Order or Reconsideration Determination (if ordered by the Director) in a conspicuous place for all Employees to view	Los Angeles County Code Section 8.101.120 or 8.101.130	Up to $500	
Failure to pay an Employee all wages owed when due	Los Angeles County Code Section 8.101.040 and 8.101.130	Up to $100 per day, per Employee, for each day that an Employee is not paid all wages owed	Up to $100 per day for each day that an Employee is not paid all wages owed

B. Calculation of Administrative Fines. Each and every day that a violation exists constitutes a separate and distinct violation. The maximum administrative fine may be increased cumulatively by 50 percent for each subsequent violation of the same provision by the same Employer within a three-year period. The maximum administrative fine that may be imposed by a Wage Enforcement Order in a calendar year for each type of violation listed above shall be $20,000 per Employee, per year, with the exception of a retaliation violation, in which case the maximum fine shall be $30,000 per Employee, per year.

C. Payments to the County; Due Date; Late Payment Fee. Administrative fines payable to the County of Los Angeles are due within 30 days from the date of the Wage Enforcement Order, if applicable. The failure of any Employer to pay an administrative fine within 30 days shall result in the assessment of an additional late fee. The amount of the additional late fee shall be ten percent of the total amount of the administrative fine assessed for each month the amounts are unpaid, compounded to include already accrued late administrative fines that remain unpaid. The County may exercise its discretion regarding the fines, penalties, and fees levied based on the severity of the violation, the length of the violation, and whether the violation was the first of its kind for the Employer.

D. Collections of Amounts Due. The failure of any Employer to pay amounts owed to the County under this Chapter when due shall constitute a debt to the County. The County may file a civil action or, to the extent feasible under State law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay an administrative fine assessed by the DCBA, or pursue any other legal remedy to collect such money.

E. Successor Liability. If any Employer ceases its business operations, sells out, exchanges, or otherwise disposes of the Employer's business or stock of goods, then any person who becomes a successor to the business shall become liable for the unpaid amount of the remedies defined in the Wage Enforcement Order if, at the time of the conveyance of the business, the successor has actual knowledge of the fact and amount of the Wage Enforcement Order.

F. Payments to Employees; Fines and Restitution. Every Employer who violates the Los Angeles County Minimum Wage Ordinance, or any portion thereof, shall be liable to the Employee whose rights were violated for back wages unlawfully withheld and a fine of $100 for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with section 200) of Chapter 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. For retaliatory action by the Employer, the Employee shall be entitled to reinstatement of his or her prior position, assignment, or job, if applicable, and a trebling of all back wages, fines, and penalties.

G. Interest. In any administrative or civil action brought for the nonpayment of wages under this Chapter, the DCBA or the court, shall award interest on all due and unpaid wages, fines, and penalties at the rate of interest specified in subdivision (b) of section 3289 of the California Civil Code, which shall accrue from the date the wages were due and payable as provided in Part 1 (commencing with section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

(Ord. 2016-0026 § 2, 2016.)

8.101.160 - Additional Penalties.

A. County Contracts, Disqualification or Termination. The DCBA shall provide notice to all County departments of Employers that are subject to a final Wage Enforcement Order, Reconsideration Determination, or Hearing Officer's decision that finds the Employer violated a County wage ordinance. To the extent permitted by applicable law, Employers determined to be in violation of a County wage ordinance may be subject to penalties affecting their current or potential contractual relationships with the County. Penalties shall be set forth in the Director's Rules and may include, but are not limited to, disqualification from contracting with the County and termination of existing contracts.

B. County Licenses. The Director may recommend that any license issued by the County or any departments thereof, or the application for, or renewal or transfer of, a license of an Employer determined to be in violation of this Chapter be suspended, revoked, or denied. In evaluating whether a license should be recommended for suspension, revocation, or denial, the Director may take into consideration factors including, but not limited to: (1) whether the Employer's violation was an inadvertent or clerical error; (2)

whether the violation was the first violation by that Employer; (3) whether any violation was corrected timely; and (4) whether any amounts due to Employees or the County as a result of the violation were timely paid. The decision to suspend, revoke, or deny a license based on a recommendation from the Director shall be made by the department issuing the license and done in accordance with applicable law.

(Ord. 2016-0026 § 2, 2016.)

8.101.170 - Other Remedies Not Affected.

A. The remedies, fines, penalties, and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, fines, penalties, and procedures. By filing a claim with the County, an employee is not precluded from being able to recover remedies available to them under any other code, regulation, or law. The procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law which may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to prosecute or abate a violation or to seek compensation for damages suffered.

B. Any Employee aggrieved by a violation of Chapter 8.100 or this Chapter, the County, or any other person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in a court of competent jurisdiction against the Employer violating Chapter 8.100 or this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of fines in the amount of $100 to each Employee whose rights under Chapter 8.100 or this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Any person or entity enforcing Chapter 8.100 or this Chapter on behalf of the public as provided for under applicable State law, upon prevailing, shall be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Los Angeles County Code or State law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.

(Ord. 2016-0026 § 2, 2016.)

8.101.180 - Authority; Severability; Effective Date.

A. Authority. This Chapter is adopted pursuant to the powers vested in the County of Los Angeles under the laws and Constitution of the State of California, including but not limited to, the police powers vested in the County pursuant to Article XI, section 7 of the California Constitution, section 26227 of the California Government Code, and section 1205 (b) of the California Labor Code.

B. Severability. If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The County Board of Supervisors hereby declares that it would have adopted this Chapter, Section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

C. Effective Date. All provisions of this ordinance shall be effective 30 days from the date of final passage of the ordinance by the Board of Supervisors pursuant to section 25123 of the California Government Code, except that no Employer shall be liable for a violation of this ordinance until after June 30, 2016.

(Ord. 2016-0026 § 2, 2016.)

FOOTNOTES FOR TITLE 8

1. For regulations on noncommercial weighing and measuring devices, see Ch. 2.40 of this code.
3. For statutory provisions on automobile dismantlers, see Vehicle Code § 11500 et seq.
5. See also Ord. 11918, prohibiting the obstruction of service station premises by parked cars during periods of fuel shortage (not codified)
7. Ord. 11539, as amended by Ord. 11548, and Ord 11548 as extended by Ord. 11607 contain related provisions on businesses selling sexually explicit materials, but are not codified.
9. For other regulations concerning businesses, see Title 7 of this code; for highway permits and other regulations concerning streets and highways, see Title 16 of this code.
11. Before being entirely amended by Ord. 12148, the rent regulation provisions of Ord. 11950 were amended by Ordinances 11960, 11981, 11986, 12107, 12030, 12031, 12035, 12044, 12048, 12073, 12099 and 12100. These ordinances are still in effect but they cannot be accurately shown in legislative history notes for each section owing to the extensive changes made by Ord. 12148.